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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation

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RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 27th August, 1993:—

BILL No. LXXIII OF 1993

A Bill to provide for the better administration of Wakfs and the matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Forty-fourth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title, extent and commencement.

1. (*1*) This Act may be called the Wakf Act, 1993.

(*2*) It extends to the whole of India except the State of Jammu and Kashmir.

(*3*) It shall come into force in a State on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different areas within a State and for different provisions of this Act, and any reference in any provision to the commencement of this Act, shall, in relation to any State or area therein be construed as reference to the commencement of that provision in such State or area.

Application of the Act.

2. Save as otherwise expressly provided under this Act, this Act shall apply to all wakfs whether created before or after the commencement of this Act:

Provided that nothing in this Act shall apply to Durgah Khawaja Saheb, Ajmer to which the Durgah Khawaja Saheb Act, 1955 applies. 36 of 1955.

Definitions.

3. In this Act, unless the context otherwise requires,—

(*a*) "beneficiary" means a person or object for whose benefit a wakf is created and includes religious, pious and charitable objects and any other objects of public utility sanctioned by the Muslim law;

(*b*) "benefit" does not include any benefit which a mutawalli is entitled to claim solely by reason of his being such mutawalli;

(*c*) "Board" means a Board of Wakf established under sub-section (*1*), or as the case may be, under sub-section (*2*) of section 13; and shall include a common wakf Board established under section 107;

(*d*) "Chief Executive Officer" means the Chief Executive Officer appointed under sub-section (*1*) of section 23;

(*e*) "Council" means the Central Wakf Council established under section 9;

(*f*) "Executive Officer" means the Executive Officer appointed by the Board under sub-section (*1*) of section 38;

(*g*) "list of wakfs" means the list of wakfs published under sub-section (*2*) of section 5;

(*h*) "member" means a member of the Board and includes the Chairperson;

(*i*) "mutawalli" means any person appointed, either verbally or under any deed or instrument by which a wakf has been created, or by a competent authority, to be the mutawalli of a wakf and includes any person who is a mutawalli of a wakf by virtue of any custom or who is a naib-mutawalli, khadim, mujawar, sajjadanashin, amin or other person appointed by a mutawalli to perform the duties of a mutawalli and save as otherwise provided in this Act, any person, committee or corporation for the time being managing or administering any wakf or wakf property:

Provided that no member of a committee or corporation shall be deemed to be a mutawalli unless such member is an office-bearer of such committee or corporation;

(*j*) "net annual income", in relation to a wakf, means net annual income determined in accordance with the provisions of the *Explanations* to sub-section (*1*) of section 72;

(*k*) "person interested in a wakf" means any person who is entitled to receive any pecuniary or other benefits from the wakf and includes—

(*i*) any person who has a right to worship or to perform any religious rite in a mosque, idgah, imambara, dargah, khangah, maqbara, graveyard or any other religious institution connected with the wakf or to participate in any religious or charitable institution under the wakf;

(*ii*) the wakif and any descendant of the wakif and the mutawalli;

(*l*) "prescribed" except in Chapter III, means prescribed by rules made by the State Government;

(*m*) "regulations", means the regulations made by the Board under this Act;

(*n*) "Shia wakf" means a wakf governed by Shia law;

(o) "Sunni wakf" means a wakf governed by Sunni law;

(p) "Survey Commissioner" means the Survey Commissioner of Wakf appointed under sub-section (*1*) of section 4 and includes any Additional or Assistant Survey Commissioners of Wakfs under sub-section (*2*) of section 4;

(*q*) "Tribunal", in relation to any area, means the Tribunal constituted under sub-section (*1*) of section 83, having jurisdiction in relation to that area.

(*r*) "wakf" means the permanent dedication by a person professing Islam, of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes, –

(*i*) a wakf by user but such wakf shall not cease to be a wakf by reason only of the user having ceased irrespective of the period of such cesser;

(*ii*) "grant", including mashrut-ul-khidmat for any purpose recognised by the muslim law as pious, religious or charitable; and

(*iii*) a wakf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable,

and "wakf" means any person making such dedication:

(*s*) "wakf deed" means any deed or instrument by which a wakf has been created and includes any valid subsequent deed or instrument by which any of the terms of the original dedication have been varied;

(*t*) "Wakf Fund", means a wakf fund formed under sub-section (*1*) of section 77.

CHAPTER II

SURVEY OF WAKFS

Preliminary survey of wakfs.

4. (*1*) The State Government may, by notification in the Official Gazette, appoint for the State a Survey Commissioner of Wakfs and as many Additional or Assistant Survey Commissioners of Wakfs as may be necessary for the purpose of making a survey of wakfs existing in the State at the date of the commencement of this Act.

(*2*) All Additional and Assistant Survey Commissioners of Wakfs shall perform their functions under this Act under the general supervision and control of the Survey Commissioner of Wakfs.

(*3*) The Survey Commissioner shall, after making such inquiry as he may consider necessary, submit his report, in respect of wakfs existing at the date of the commencement of this Act in the State or any part

thereof, to the State Government containing the following particulars, namely:—

(*a*) the number of wakfs in the State showing the Shia wakfs and Sunni wakfs separately;

(*b*) the nature and objects of each wakf;

(*c*) the gross income of the property comprised in each wakf;

(*d*) the amount of land revenue, cesses, rates and taxes payable in respect of each wakf;

(*e*) the expenses incurred in the realisation of the income and the pay or other remuneration of the mutawalli of each wakf; and

(*f*) such other particulars relating to each wakf as may be prescribed.

(*4*) The Survey Commissioner shall, while making any inquiry, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely:— 5 of 1908.

(*a*) summoning and examining any witness;

(*b*) requiring the discovery and production of any document;

(*c*) requisitioning any public record from any court or office;

(*d*) issuing commissions for the examination of any witness or accounts;

(*e*) making any local inspection or local investigation;

(*f*) such other matters as may be prescribed.

(*5*) If, during any such inquiry, any dispute arises as to whether a particular wakf is a Shia wakf or Sunni wakf and there are clear indications in the deed of wakf as to its nature, the dispute shall be decided on the basis of such deed.

(*6*) The State Government may, by notification in the Official Gazette, direct the Survey Commissioner to make a second or subsequent survey of wakf properties in the State and the provisions of sub-sections (*2*), (*3*), (*4*) and (*5*) shall apply to such survey as they apply to a survey directed under sub-section (*1*):

Provided that no such second or subsequent survey shall be made until the expiry of a period of twenty years from the date on which the report in relation to the immediately previous survey was submitted under sub-section (*3*).

Publication of list of wakfs.

5. (*1*) On receipt of a report under sub-section (3) of section 4, the State Government shall forward a copy of the same to the Board.

(2) The Board shall examine the report forwarded to it under sub-section (*1*) and publish in the Official Gazette a list of Sunni wakfs or Shia wakfs in the State, whether in existence at the commencement of this Act or coming into existence thereafter, to which the report relates and containing such other particulars as may be prescribed.

Disputes regarding wakfs.

6. (*1*) If any question arises whether a particular property specified as wakf property in the list of wakfs is wakf property or not or whether a waki specified in such list is a Shia wakf or Sunni wakf, the Board or the mutawalli of the wakf or any person interested therein may institute a suit in a Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final:

Provided that no such suit shall be entertained by the Tribunal after the expiry of one year from the date of the publication of the list of wakfs.

Explanation.—For the purposes of this section and section 7, the expression "any person interested therein", shall, in relation to any property specified as wakf property in the list of wakfs published after the commencement of this Act, shall include also every person who, though not interested in the wakf concerned, is interested in such property and to whom a reasonable opportunity had been afforded to represent his case by notice served on him in that behalf during the course of the relevant inquiry under section 4.

(*2*) Notwithstanding anything contained in sub-section (*1*), no proceeding under this Act in respect of any wakf shall be stayed by reason only of the pendency of any such suit or of any appeal or other proceeding arising out of such suit.

(*3*) The Survey Commissioner shall not be made a party to any suit under sub-section (*1*) and no suit prosecution or other legal proceeding shall lie against him in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

(*4*) The list of wakfs shall, unless it is modified in pursuance of a decision of the Tribunal under sub-section (*1*), be final and conclusive.

(*5*) On and from the commencement of this Act in a State, no suit or other legal proceeding shall be instituted or commenced in a court in that State in relation to any question referred to in sub-section (*1*).

Power of Tribunal to determine disputes regarding wakfs.

7. (*1*) If, after the commencement of this Act, any question arises, whether a particular property specified as wakf property in a list of wakfs is wakf property or not, or whether a wakf specified in such list is a Shia wakf or a Sunni wakf, the Board or the mutawalli of the wakf, or any person interested therein, may apply to the Tribunal having jurisdiction in relation to such property, for the decision of the question and the decision of the Tribunal thereon, shall be final:

Provided that—

(*a*) in the case of the list of wakfs relating to any part of the State and published after the commencement of this Act no such application shall be entertained after the expiry of one year from the date of publication of the list of wakfs; and

(*b*) in the case of the list of wakfs relating to any part of the State and published at any time within a period of one year immediately preceding the commencement of this Act, such an application may be entertained by the Tribunal within the period of one year from such commencement:

Provided further that where any such question has been heard and finally decided by a civil court in a suit instituted before such commencement, the Tribunal shall not re-open such question.

(2) Except where the Tribunal has no jurisdiction by reason of the provisions of sub-section (5), no proceeding under this section in respect of any wakf shall be stayed by any court, tribunal or other authority by reason only of the pendency of any suit, application or appeal or other proceeding arising out of any such suit, application, appeal or other proceeding.

(3) The Chief Executive Officer shall not be made a party to any application under sub-section (1).

(4) The list of wakfs and where any such list is modified in pursuance of a decision of the Tribunal under sub-section (1), the list as so modified, shall be final.

(5) The Tribunal shall not have jurisdiction to determine any matter which is the subject-matter of any suit or proceeding instituted or commenced in a civil court under sub-section (1) of section 6, before the commencement of this Act or which is the subject-matter of any appeal from the decree passed before such commencement in any such suit or proceeding or of any application for revision or review arising out of such suit, proceeding or appeal, as the case may be.

Recovery of costs of survey.

8. (1) The total cost of making a survey including the cost of publication of the list or lists of wakfs under this Chapter shall be borne by all the mutawallis of the wakfs the net annual income whereof exceeds five hundred rupees, in proportion to the net annual income accruing in the State to such wakfs, such proportion being assessed by the Survey Commissioner.

(2) Notwithstanding anything contained in the deed or instrument by which the wakf was created, any mutawalli may pay from the income of the wakf any sum due from him under sub-section (1).

(3) Any sum due from a mutawalli under sub-section (1) may, on a certificate issued by the State Government, be recovered from the property comprised in the wakf in the same manner as an arrear of land revenue.

CHAPTER III

CENTRAL WAKF COUNCIL

Establishment and constitution of Central Wakf Council.

9. (1) For the purpose of advising it, on matters concerning the working of Boards and the due administration of wakfs, the Central Government may, by notification in the Official Gazette, establish a Council to be called the Central Wakf Council.

(2) The Council shall consist of a Chairperson, who shall be the Union Minister in charge of wakfs, and such other members not exceeding twenty in number, as may be appointed by the Central Government.

(3) The term of office of, the procedure to be followed in the discharge of their functions by, and the manner of filling casual vacancies among, members of the Council shall be such as may be prescribed by rules made by the Central Government.

Finance of Council.

10. (*1*) Every Board shall pay from its Wakf Fund annually to the Council such contribution as is equivalent to one per cent. of the aggregate of the net annual income of the wakfs in respect of which contribution is payable under sub-section (*1*) of section 72:

Provided that where the Board, in the case of any particular wakf has remitted under sub-section (*2*) of section 72 the whole of the contribution payable to it under sub-section (*1*) of that section, then for calculating the contribution payable to the Council under this section the net annual income of the wakf in respect of which such remission has been granted shall not be taken into account.

(*2*) All monies received by the Council under sub-section (*1*) and all other monies received by it as donations, benefactions and grants shall form a fund to be called the Central Wakf Fund.

(*3*) Subject to any rules that may be made by the Central Government in this behalf, the Central Wakf Fund shall be under the control of the Council and may be applied for such purposes as the Council may deem fit.

Accounts and audit.

11. (*1*) The Council shall cause to be maintained such books of account and other books in relation to its accounts in such form and in such manner as may be prescribed by rules made by the Central Government.

(*2*) The accounts of the Council shall be audited and examined annually by such auditor as may be appointed by the Central Government.

(*3*) The costs of the audit shall be paid from the Central Wakf Fund.

Power of Central Government to make rules.

12. (*1*) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Chapter.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) the term of office of, the procedure to be followed in the discharge of their functions by, and the manner of filling casual vacancies among the members of the Council;

(*b*) control over and application of the Central Wakf Fund;

(*c*) the form and manner in which accounts of the Council may be maintained.

(*3*) Every rule made by the Central Government under this Chapter shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following, the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

CHAPTER IV

ESTABLISHMENT OF BOARDS AND THEIR FUNCTIONS

Incorporation.

13. (*1*) With effect from such date as the State Government may, by notification in the Official Gazette, appoint in this behalf, there shall be established a Board of Wakfs under such name as may be specified in the notification.

(*2*) Notwithstanding anything contained in sub-section (*1*), if the Shia wakfs in any State constitute in number more than fifteen per cent. of all the wakfs in the State or if the income of the properties of the Shia wakfs in the State constitutes more than fifteen per cent. of the total income of properties of all the wakfs in the State, the State Government may, by notification in the Official Gazette, establish a Board of Wakfs each for Sunni wakfs and for Shia wakfs under such names as may be specified in the notification.

(*3*) The Board shall be a body corporate having perpetual succession and a common seal with power to acquire and hold property and to transfer any such property subject to such conditions and restrictions as may be prescribed and shall by the said name sue and be sued.

Composition of Board.

14. (*1*) The Board for a State and the Union territory of Delhi shall consist of—

(*a*) a Chairperson;

(*b*) one and not more than two members, as the State Government may think fit, to be elected from each of the electoral colleges consisting of—

(*i*) Muslim Members of Parliament from the State or, as the case may be, the Union territory of Delhi,

(*ii*) Muslim Members of the State Legislature,

(*iii*) Muslim Members of the Bar Council of the State, and

(*iv*) mutawallis of the wakfs having an annual income of rupees one lakh and above;

(c) one and not more than two members to be nominated by the State Government, each from recognised scholars in Islamic Theology;

(*d*) one and not more than two members to be nominated by the State Government representing eminent Muslim Organisations;

(*e*) an officer of the State Government not below the rank of Deputy Secretary.

(*2*) Election of the members specified in clause (*b*) of sub-section (*1*) shall be held in accordance with the system of proportional representation by means of a single transferable vote, in such manner as may be prescribed:

Provided that where the number of Muslim Members of Parliament, the State Legislature or the State Bar Council, as the case may be, is only one, such Muslim Member shall be declared to have been elected on the Board:

Provided further that where there are no Muslim Members in any of the categories mentioned in sub-clauses (*i*) to (*iii*) of clause (*b*) of sub-section (*1*), the State Government shall nominate suitable persons, preferably from ex-Muslim Members of Parliament, the State Legislature or the State Bar Council, as the case may be.

(*3*) Notwithstanding anything contained in this section, where the State Government is satisfied that for reasons to be recorded in writing, it is not reasonably practicable to constitute an electoral college for any of the categories mentioned in sub-clause (i) to (iii) of clause (b) of sub-section (*1*), the State Government may nominate such persons as the members of the Board as it deems fit.

(*4*) The State Government shall ensure that the number of elected members of the Board is more than the nominated members of the Board.

(*5*) Where there are Shia wakfs but no separate Shia Wakfs Board exists, at least one of the members from the categories listed in sub-section (*1*), shall be a Shia Muslim.

(*6*) In determining the number of Shia members or Sunni members of the Board, the State Government shall have regard to the number and value of Shia wakfs and Sunni wakfs to be administered by the Board and appointment of the members shall be made, so far as may be, in accordance with such determination.

(*7*) In the case of the Union territory. other than Delhi, the Board shall consist of not less than three and not more than five members to be appointed by the Central Government from amongst the categories of persons specified in sub-section (*1*):

Provided that there shall be one Mutawalli as the member of the Board.

(*8*) Whenever the Board is constituted or re-constituted, the members of the Board present at a meeting convened for the purpose shall elect one from amongst themselves as the Chairperson of the Board.

(*9*) The members of the Board shall be appointed by the State Government by notification in the Official Gazette.

Term of office.

15. The members of the Board shall hold office for a term of five years.

Disqualification for being appointed, or for continuing as, a member of the Board.

16. A person shall be disqualified for being appointed, or for continuing as, a member of the Board if—

(*a*) he is not a Muslim and is less than twenty-one years of age;

(*b*) he is found to be a person of unsound mind;

(*c*) he is an undischarged insolvent;

(*d*) he has been convicted of an offence involving moral turpitude and such conviction has not been reversed or he has not been granted full pardon in respect of such offence;

(*e*) he has been on a previous occasion—

(*i*) removed from his office as a member or as a mutawalli,

or

(*ii*) removed by an order of a competent court or tribunal from any position of trust either for mismanagement or for corruption.

Meetings of the Board.

17. (*1*) The Board shall meet for the transaction of business at such time and places as may be provided by regulations.

(*2*) The Chairperson, or in his absence, any member chosen by the members from amongst themselves shall preside at a meeting of the Board.

(*3*) Subject to the provisions of this Act, all questions which come before any meeting of the Board shall be decided by a majority of votes of the members present, and in the case of equality of votes, the Chairperson or, in his absence, any other person presiding shall have a second or casting vote.

Committees of the Board.

18. (*1*) The Board may, whenever it considers necessary, establish either generally or for a particular purpose or for any specified area or areas committees for the supervision of wakfs.

(*2*) The constitution, functions and duties and the term of office of such committees shall be determined from time to time by the Board:

Provided that it shall not be necessary for the members of such committees to be members of the Board.

Resignation of Chairperson and members.

19. The Chairperson or any other member may resign his office by writing under his hand addressed to the State Government:

Provided that the Chairperson or the member shall continue in office until the appointment of his successor is notified in the Official Gazette.

Removal of Chairperson and member.

20. (*1*) The State Government may, by notification in the Official Gazette, remove the Chairperson of the Board or any member thereof if he—

(*a*) is or becomes subject to any disqualifications specified in section 16; or

(*b*) refuses to act or is incapable of acting or acts in a manner which the State Government, after hearing any explanation that he may offer, considers to be prejudicial to the interests of the wakfs; or

(*c*) fails in the opinion of the Board, to attend three consecutive meetings of the Board, without sufficient excuse.

(*2*) Where the Chairperson of the Board is removed under sub-section (*1*), he shall also cease to be a member of the Board.

Filling of a vacancy.

21. When the seat of a member becomes vacant by his removal, resignation, death or otherwise, a new member shall be appointed in his place and such member shall hold office so long as the member whose place he fills would have been entitled to hold office, if such vacancy had not occurred.

Vacancies etc., not to invalidate proceedings of the Board.

22. No act or proceeding of the Board shall be invalid by reason only of the existence of any vacancy amongst its members or any defect in the constitution thereof.

Appointment of Chief Executive Officer and his term of office and other conditions of service

23. (*1*) There shall be a Chief Executive Officer of the Board who shall be a Muslim and shall be appointed by the State Government, in consultation with the Board, by notification in the Official Gazette.

(*2*) The term of office and other conditions of service of the Chief Executive Officer shall be such as may be prescribed.

(*3*) The Chief Executive Officer shall be *ex officio* Secretary of the Board and shall be under the administrative control of the Board.

Officers and other employees of the Board.

24. (*1*) The Board shall have the assistance of such number of officers and other employees as may be necessary for the efficient performance of its functions under this Act, details thereof shall be determined by the Board in consultation with the State Government.

(*2*) The appointment of officers and other employees, their term of office and conditions of service shall be such as may be provided by regulations.

Duties and powers of Chief Executive Officer.

25. (*1*) Subject to the provisions of this Act and of the rules made thereunder and the directions of the Board, functions of the Chief Executive Officer shall include—

(*a*) investigating the nature and extent of wakfs and wakf properties and calling whenever necessary, an inventory of wakf properties and calling, from time to time, for accounts, returns and information from mutawallis;

(*b*) inspecting or causing inspection of wakf properties and account, records, deeds or documents relating thereto;

(*c*) doing generally of such acts as may be necessary for the control, maintenance and superintendence of wakfs.

(*2*) In exercising the powers of giving directions under sub-section (*1*) in respect of any wakf, the Board shall act in conformity with the directions by the wakif in the deed of the wakf, the purpose of wakf and such usage and customs of the wakf as are sanctioned by the Muslim law.

(*3*) Save as otherwise expressly provided in this Act, the Chief Executive Officer shall exercise such powers and perform such duties as may be assigned to him or delegated to him under this Act.

Powers of Chief Executive Officer in respect of orders or resolutions of Board.

26. Where the Chief Executive Officer considers that an order or resolution passed by the Board—

(*a*) has not been passed in accordance with the law; or

(*b*) is in excess of or is an abuse of the powers conferred on the Board by or under this Act or by any other law; or

(c) if implemented, is likely to—

(i) cause financial loss to the Board or to the concerned wakf or to the wakfs generally, or

(ii) lead to a riot or breach of peace; or

(iii) cause danger to human life, health or safety; or

(d) is not beneficial to the Board or to any wakf or to wakfs generally,

he may, before implementing such order or resolution place the matter before the Board for its reconsideration and, if there is no unanimity at the stage of reconsideration, refer the matter to the State Government along with his objections to the order or resolution, and the decision of the State Government thereon shall be final.

Delegation of powers by the Board.

27. (1) The Board may, by a general or special order in writing, delegate to the Chairperson, any other member, the secretary or any other officer or servant of the Board or any area committee, subject to such conditions and limitations, as may be specified in the said order, such of its powers and duties under this Act, as it may deem necessary.

Chief Executive Officer to exercise powers through Collectors, etc.

28. (1) Subject to the provisions of this Act and of the rules made thereunder, the Chief Executive Officer may exercise all or any of the powers conferred on him by or under this Act through the Commissioner of the division or the Collector of the district in which the concerned wakf property is situated or through any other Gazetted Officer whom he may appoint for such purpose and may, from time to time, delegate any of his powers to any such Commissioner of the division or Collector or any other Gazetted Officer and may, at any time, revoke the delegations so made by him.

(2) Where any delegation of powers is made by the Chief Executive Officer under sub-section (1), the person to whom such delegation is made may exercise those powers in the same manner and to the same extent as if they have been conferred on him directly by this Act and not by way of delegation.

Powers of Chief Executive Officer to inspect record registers, etc.

29. The Chief Executive Officer or any officer of the Board duly authorised by him in this behalf shall, subject to such conditions and restrictions as may be prescribed and subject to the payment of such fees as may be leviable under any law for the time being in force, be entitled at all reasonable time to inspect, in any public office, any records, registers or other documents relating to a wakf or movable or immovable properties which are wakf properties or are claimed to be wakf properties.

Inspection of records.

30. (1) The Board may allow inspection of its proceedings or other records in its custody and issue copies of the same on payment of such fees and subject to such conditions as may be prescribed.

(2) All copies issued under this section shall be certified by the Chief Executive Officer of the Board in the manner provided in section 36 of the Indian Evidence Act, 1872. 1 of 1872.

(3) The powers conferred on the Chief Executive Officer by sub-section (2) may also be exercised by such other officer or officers of the

Board as may either generally or specially be authorised in this behalf by the Board.

Prevention of disqualification for membership of Parliament.

31. It is hereby declared that the Offices of the Chairperson or members of a Board shall not be disqualified and shall be deemed never to have been disqualified for being chosen as, or for being, a member of Parliament.

Powers and functions of the Board.

32. (*1*) Subject to any rules that may be made under this Act, the general superintendence of all wakfs in a State shall vest in the Board established for the State; and it shall be the duty of the Board so to exercise its powers under this Act as to ensure that the wakfs under its superintendence are properly maintained, controlled and administered and the income thereof is duly applied to the objects and for the purposes for which such wakfs were created or intended:

Provided that in exercising its powers under this Act in respect of any wakf, the Board shall act in conformity with the directions of the wakf, the purposes of the wakf and any usage or custom of the wakf sanctioned by the Muslim law.

Explanation.—For the removal of doubts, it is hereby declared that in this sub-section, "wakf" includes a wakf in relation to which any scheme has been made by any court of law, whether before or after the commencement of this Act.

(*2*) Without prejudice to the generality of the foregoing power, the functions of the Board shall be—

(*a*) to maintain a record containing information relating to the origin, income, object and beneficiaries of every wakf;

(*b*) to ensure that the income and other property of wakfs are applied to the objects and for the purposes for which such wakfs were intended or created;

(*c*) to give directions for the administration of wakfs;

(*d*) to settle schemes of management for a wakf:

Provided that no such settlement shall be made without giving the parties affected an opportunity of being heard;

(*e*) to direct—

(*i*) the utilisation of the surplus income of a wakf consistent with the objects of a wakf;

(*ii*) in what manner the income of a wakf, the objects of which are not evident from any written instrument, shall be utilized;

(*iii*) in any case where any object of wakf has ceased to exist or has become incapable of achievement, that so much of the income of the wakf as was previously applied to that object shall be applied to any other object, which shall be similar, or nearly similar to the original object or for the benefit of the

poor or for the purpose of promotion of knowledge and learning in the Muslim community:

Provided that no direction shall be given under this clause without giving the parties affected an opportunity of being heard.

Explanation.—For the purposes of this clause, the powers of the Board shall be exercised—

(*i*) in the case of a Sunni wakf, by the Sunni members of the Board only; and

(*ii*) in the case of a Shia wakf, by the Shia members of the Board only:

Provided that where having regard to the number of the Sunni or Shia members in the Board and other circumstances, it appears to the Board that the power should not be exercised by such members only, it may co-opt such other Muslims being Sunnis or Shias, as the case may be, as it thinks fit, to be temporary members of the Board for exercising its powers under this clause;

(*f*) to scrutinise and approve the budgets submitted by mutawallis and to arrange for the auditing of account of wakfs;

(*g*) to appoint and remove mutawallis in accordance with the provisions of this Act;

(*h*) to take measures for the recovery of lost properties of any wakf;

(*i*) to institute and defend suits and proceedings relating to wakfs;

(*j*) to sanction any transfer of immovable property of a wakf by way of sale, gift, mortgage, exchange or lease, in accordance with the provisions of this Act:

Provided that no such sanction shall be given unless at least two-thirds of the members of the Board vote in favour of such transaction;

(*k*) to administer the Wakf Fund;

(*l*) to call for such returns, statistics, accounts and other information from the mutawallis with respect to the wakf property as the Board may, from time to time, require;

(*m*) to inspect, or cause inspection of, wakf properties, accounts, records or deeds and documents relating thereto;

(*n*) to investigate and determine the nature and extent of wakf and wakf property, and to cause, whenever necessary, a survey of such wakf property;

(*o*) generally do all such acts as may be necessary for the control, maintenance and administration of wakfs.

(*3*) Where the Board has settled any scheme of management under clause (*d*) or given any direction under clause (*e*) of sub-section (*2*), any person interested in the wakf or affected by such settlement or direction may institute a suit in a Tribunal for setting aside such settlement or directions and the decision of the Tribunal thereon shall be final.

(4) Where the Board is satisfied that any wakf land, which is a wakf property, offers a feasible potential for development as a shopping centre, market, housing flats and the like, it may serve upon the mutawalli of the concerned wakf a notice requiring him within such time, but not less than sixty days, as may be specified in the notice, to convey its decision whether he is willing to execute the development works specified in the notice.

(5) On consideration of the reply, if any, received to the notice issued under sub-section (4), the Board, if it is satisfied that the mutawalli is not willing or is not capable of executing the works required to be executed in terms of the notice, it may, with the prior approval of the Government, take over the property, clear it of any building or structure thereon, which, in the opinion of the Board is necessary for execution of the works and execute such works from wakf funds or from the finances which may be raised on the security of the properties of the wakf concerned, and control and manage the property till such time as all expenses incurred by the Board under this section, together with interest thereon, the expenditure on maintenance of such works and other legitimate charges incurred on the property are recovered from the income derived from the property:

Provided that the Board shall compensate annually the mutawalli of the concerned wakf to the extent of the average annual net income derived from the property during the three years immediately preceding the taking over of the property by the Board.

(6) After all the expenses as enumerated in sub-section (5) have been recouped from the income of the developed properties, the developed properties shall be handed over to mutawalli of the concerned wakf.

Powers of inspection by Chief Executive Officer or persons authorised by him.

33. (1) With a view to examining whether, by reason of any failure or negligence on the part of a mutawalli in the performance of his executive or administrative duties, any loss or damage has been caused to any wakf or wakf property, the Chief Executive Officer with the prior approval of the Board, either himself or any other person authorised by him in writing in this behalf, may inspect all movable and immovable properties, which are wakf properties, and all records, correspondences, plans, accounts and other documents relating thereto.

(2) Whenever any such inspection as referred to in sub-section (1) is made, the concerned mutawalli and all officers and other employees working under him and every person connected with the administration of the wakf, shall extend to the person making such inspection, all such assistance and facilities as may be necessary and reasonably required by him to carry out such inspection, and shall also produce for inspection any movable property or documents relating to the wakf as may be called for by the person making the inspection and furnish to him such information relating to the wakf as may be required by him.

(3) Where, after any such inspection, it appears that the concerned mutawalli or any officer or other employee who is or was working under him had mis-appropriated, misapplied or fraudulently retained, any money or other wakf property, or had incurred irregular, unauthorised or improper expenditure from the funds of the wakf, the Chief Executive Officer may, after giving the mutawalli

or the person concerned a reasonable opportunity of showing cause why an order for the recovery of the amount or property, should not be passed against him and after considering such explanation, if any, as such person may furnish, determine the amount or the property, which has been mis-appropriated, misapplied or fraudulently retained, or the amount of the irregular, unauthorised or improper expenditure incurred by such person, and make an order directing such person to make payment of the amount so determined and to restore the said property to the wakf, within such time as may be specified in the order.

(4) A mutawalli or other person aggrieved by such order may, within thirty days of the receipt by him of the order, appeal to the Tribunal:

Provided that no such appeal shall be entertained by the Tribunal unless the appellant first deposits with the Chief Executive Officer the amount which has been determined under sub-section (3) as being payable by the appellant and the Tribunal shall have no power to make any order staying pending the disposal of the appeal, the operation of the order made by the Chief Executive Officer under sub-section (3).

(5) The Tribunal may, after taking such evidence as it may think fit, confirm, reverse or modify the order made by the Chief Executive Officer under sub-section (3) or may remit, either in whole or in part, the amount specified in such order and may make such orders as to costs as it may think appropriate in the circumstances of the case.

(6) The order made by the Tribunal under sub-section (5) shall be final.

Recovery of the amount determined under section 33.

34. Where any mutawalli or other person who has been ordered, whether under sub-section (3) or sub-section (5) of section 33, to make any payment or to restore the possession of any property, omits or fails to make such payment or restoration within the time specified in such order, the Chief Executive Officer, with the prior approval of the Board shall, take such steps as he may think fit for the recovery of possession of the property aforesaid and shall also send a certificate to the Collector of the district in which the property of such mutawalli or other person is situate, stating therein the amount that has been determined by him or by the Tribunal, as the case may be, under section 33, as being payable by such mutawalli or other person, and, thereupon, the Collector shall recover the amount specified in such certificate as if it were an arrear of land revenue and on the recovery of such amount, pay the same to the Chief Executive Officer, who shall, on receipt thereof, credit the amount to the funds of the concerned wakf.

Conditional attachment by Tribunal.

35. (1) Where the Chief Executive Officer is satisfied that the mutawalli or any other person who has been ordered under sub-section (3) or sub-section (5) of section 33 to make any payment, with intent to defeat or delay the execution of the said order,—

(a) is about to dispose of the whole or any part of his property; or

(b) is about to remove the whole or any part of his property from the jurisdiction of the Chief Executive Officer,

he may, with the prior approval of the Board, apply to the Tribunal for the conditional attachment of the said property or such part thereof, as he may think necessary.

(*2*) The Chief Executive Officer shall, unless the Tribunal otherwise directs, specify in the application the property required to be attached and the estimated value thereof.

(*3*) The Tribunal may direct the mutawalli or the person concerned, as the case may be, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Tribunal when required, the said property or the value of the same or such portion thereof as may be sufficient to satisfy the amount specified in the certificate referred to in section 34, or to appear and show cause why he should not furnish such security.

(*4*) The Tribunal may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

(*5*) Every attachment made under this section shall be made in accordance with the provisions of the Code of Civil Procedure, 1908, as if it were an order for attachment made under the provision of the said Code.

5 of 1908.

CHAPTER V

REGISTRATION OF WAKFS

36. (*1*) Every wakf, whether created before or after the commencement of this Act, shall be registered at the office of the Board. Registration.

(*2*) Application for registration shall be made by the mutawalli:

Provided that such applications may be made by the wakif or his descendants or a beneficiary of the wakf or any Muslim belonging to the sect to which the wakf belongs.

(*3*) An application for registration shall be made in such form and manner and at such place as the Board may by regulation provide and shall contain following particulars:—

(*a*) a description of the wakf properties sufficient for the identification thereof;

(*b*) the gross annual income from such properties;

(*c*) the amount of land revenue, cesses, rates and taxes annually payable in respect of the wakf properties;

(*d*) an estimate of the expenses annually incurred in the realisation of the income of the wakf properties;

(*e*) the amount set apart under the wakf for—

(*i*) the salary of the mutawalli and allowances to the individuals;

(*ii*) purely religious purposes;

(*iii*) charitable purposes; and

(*iv*) any other purposes;

(*f*) any other particulars provided by the Board by regulations.

(*4*) Every such application shall be accompanied by a copy of the wakf deld or if no such deed has been executed or a copy thereof cannot

be obtained, shall contain full particulars, as far as they are known to the applicant, of the origin, nature and objects of the wakf..

(5) Every application made under sub-section (2) shall be signed and verified by the applicant in the manner provided in the Code of Civil Procedure, 1908 for the signing and verification of pleadings. 5 of 1908.

(6) The Board may require the applicant to supply any further particulars or information that it may consider necessary.

(7) On receipt of an application for registration, the Board may, before the registration of the wakf make such inquiries as it thinks fit in respect of the genuineness and validity of the application and correctness of any particulars therein and when the application is made by any person other than the person administering the wakf property, the Board shall, before registering the wakf, give notice of the application to the person administering the wakf property and shall hear him if he desires to be heard.

(8) In the case of wakfs created before the commencement of this Act, every application for registeration shall be made, within three months from such commencement and in the case of wakfs created after such commencement, within three months from the date of the creation of the wakf.

Register of wakfs.

37. The Board shall maintain a register of wakf which shall contain in respect of each wakf copies of the wakf deeds, when available and the following particulars, namely:—

(*a*) the class of the wakf;

(*b*) the name of the mutawalli;

(*c*) the rule of succession to the office of mutawalli under the wakf deed or by custom or by usage;

(*d*) particulars of all wakf properties and all title deeds and documents relating thereto;

(*e*) particulars of the scheme of administration and the scheme of expenditure at the time of registration;

(*f*) such other particulars as may be provided by regulations.

Powers of Board to appoint Executive Officer.

38. (*1*) Notwithstanding anything contained in this Act, the Board may, if it is of the opinion that it is necessary so to do in the interests of the wakf, appoint on whole-time or part-time basis or in an honorary capacity, subject to such conditions as may be provided by regulations, an Executive Officer with such supporting staff as it considers necessary for any wakf having a gross annual income of not less than five lakhs rupees:

Provided that the person chosen for appointment should be a person professing Islam.

(*2*) Every Executive Officer appointed under sub-section (*1*) shall exercise such powers and discharge such duties as pertain only to the administration of the property of the wakf for which he has been appointed and shall exercise those powers and discharge those duties under the direction, control and supervision of the Board:

Provided that the Executive Officer who is appointed for a wakf having a gross annual income of not less than five lakhs rupees shall ensure that the budget of the wakf is submitted, the accounts of the wakf are regularly maintained, and the yearly statement of accounts are submitted within such time as the Board may specify.

(3) While exercising his powers and discharging his functions under sub-section (2), the Executive Officer shall not interfere with any religious duties or any usage or custom of the wakf sanctioned by the Muslim law.

(4) The salaries and allowances of the Executive Officer and his staff shall be fixed by the Board and in fixing the quantum of such salary the Board shall have due regard to the income of the wakf, the extent and nature of the duties of the Executive Officer and shall also ensure that the amounts of such salaries and allowances are not disproportionate to the income of the wakf and do not operate as an unnecessary financial burden on it.

(5) The salaries and allowances of the Executive Officer and his staff shall be paid by the Board from the Wakf Fund and, if the wakf generates any additional income as a result of appointment of the Executive Officer, the Board may claim reimbursement of amounts spent on the salaries and allowances from the fund of the wakf concerned.

(6) The Board may, for sufficient reasons, and after giving to the Executive Officer or a member of his staff, a reasonable opportunity of being heard, suspend, remove or dismiss the Executive Officer or a member of his staff from his post.

(7) Any Executive Officer or a member of his staff who is aggrieved by any order of removal or dismissal made under sub-section (6) may, within thirty days from the date of communication of the order, prefer an appeal against the order to the Tribunal and the Tribunal may, after considering such representation as the Board may make in the matter, and after giving a reasonable opportunity to the Executive Officer or a member of his staff of being heard, confirm, modify or reverse the order.

Powers of Board in relation to wakfs which have ceased to exist.

39. (1) The Board shall, if it is satisfied that the objects or any part thereof, of a wakf have ceased to exist, whether such cesser took place before or after the commencement of this Act, cause an inquiry to be held by the Chief Executive Officer, in the prescribed manner, to ascertain the properties and funds pertaining to such wakf.

(2) On the receipt of the report of inquiry of the Chief Executive Officer, the Board shall pass an order—

(*a*) specifying the property and funds of such wakf.

(*b*) directing that any property or funds pertaining to such wakf which have been recovered shall be applied or utilised for the renovation of any wakf property and where there is no need for making any such renovation or where utilisation of the funds for such renovation is not possible, be appropriated, to any of the purposes specified in sub-clause (*iii*) of clause (*e*) of sub-section (2) of section 32.

(3) The Board may, if it has reason to believe that any building or other place which was being used for religious purpose or instruction

or for charity has, whether before or after the commencement of this Act, ceased to be used for that purpose, make an application to the Tribunal for an order directing the recovery of possession of such building or other place.

(4) The Tribunal may, if it is satisfied, after making such inquiry as it may think fit, that such building or other place—

(a) is wakf property;

(b) has not been acquired under any law for the time being in force relating to acquisition of land or is not under any process of acquisition under any such law, or has not vested in the State Government under any law for the time being in force relating to land reforms; and

(c) is not in the occupation of any person who has been authorised by or under any law for the time being in force to occupy such building or other place, make an order —

(i) directing the recovery of such building or place from any person who may be in unauthorised possession thereof, and

(ii) directing that such property, building or place be used for religious purpose or instruction as before, or if such use is not possible, be utilised for any purpose specified in sub-clause (iii) of clause (e) of sub-section (2) of section 32.

Decision if a property is wakf property.

40. (1) The Board may itself collect information regarding any property which it has reason to believe to be wakf property and if any question arises whether a particular property is wakf property or not or whether a wakf is a Sunni wakf or a Shia wakf, it shall refer the question to a Tribunal.

(2) The decision of the Tribunal on any question referred to it under sub-section (1) shall be final.

(3) Where the Board has any reason to believe that any property of any trust or society registered in pursuance of the Indian Trusts Act, 1882 or under the Societies Registration Act, 1860 or under any other Act, is wakf property, the Board may notwithstanding anything contained in such Act, hold an inquiry in regard to such property and if after such inquiry the Board is satisfied that such property is wakf property, call upon the trust or society, as the case may be, either to register such property under this Act as wakf property or show cause why such property should not be so registered: 2 of 1882. 21 of 1860.

Provided that in all such cases, notice of the action proposed to be taken under this sub-section shall be given to the authority by whom the trust or society had been registered.

(4) The Board shall, after duly considering such cause as may be shown in pursuance of notice issued under sub-section (3), pass such orders as it may think fit and the order so made by the Board, shall be final, unless it is revoked or modified by a Tribunal.

Power to cause registration of wakf and to amend register.

41. The Board may direct a mutawalli to apply for the registration of a wakf, or to supply any information regarding a wakf or may itself cause the wakf to be registered or may at any time amend the register of wakfs.

Change in the management of wakfs to be notified.

42. (*1*) In the case of any change in the management of a registered wakf due to the death or retirement or removal of the mutawalli, the incoming mutawalli shall forthwith, and any other person may notify the change to the Board.

(*2*) In the case of any other change in any of the particulars mentioned in section 36, the mutawalli shall, within three months from the occurrance of the change, notify such change to the Board.

Wakfs registered before the commencement of this Act deemed to be registered.

43. Notwithstanding anything contained in this Chapter, where any wakf has been registered before the commencement of this Act, under any law for the time being in force, it shall not be necessary to register the wakf under the provisions of this Act and any such registration made before such commencement shall be deemed to be a registration made under this Act.

CHAPTER VI

MAINTENANCE OF ACCOUNTS OF WAKFS

Budget.

44. (*1*) Every mutawalli of a wakf having an annual income exceeding fifty thousand rupees shall prepare in such form and at such time each year, as may be provided by regulations, a budget in respect of the financial year next ensuing showing the estimated receipts and expenditure, and copies thereof shall be forwarded to the Board for approval.

(*2*) The mutawallis of wakfs having an annual income not exceeding fifty thousand rupees shall also prepare a budget in respect of each financial year showing the estimated receipts and expenditure and copies thereof shall be sent to the Board for information.

Preparation of budget of wakfs under direct management of the Board.

45. (*1*) The Chief Executive Officer shall prepare, in such form and at such time as may be prescribed, a budget in respect of the financial year next ensuing showing the estimated receipts and expenditure for each of the wakfs under the direct management of the Board, showing therein the estimated receipts and expenditure and submit it to the Board for its approval.

(*2*) While submitting the budget under sub-section (*1*), the Chief Executive Officer shall also prepare statement giving details of the increase, if any, in the income of each wakf under the direct management of the Board and the steps which have been taken for its better management and the results accruing therefrom during the year.

(*3*) The Chief Executive Officer shall keep regular accounts and be responsible for the proper management of every wakf under the direct management of the Board.

(4) Every budget submitted by the Chief Executive Officer under sub-section (1) shall comply with the requirements of section 46 and, for this purpose, references therein to the mutawalli of the wakf shall be construed as references to the Chief Executive Officer.

(5) The audit of accounts of every wakf under the direct management of the Board shall be undertaken by the State Examiner of Local Funds or any other officer appointed by the State Government for this purpose, irrespective of the income of the wakf.

(6) The provisions of sub-sections (2) and (3) of section 47 and the provisions of sections 48 and 49 shall, in so far as they are not inconsistent with the provisions of this section, apply to the audit of accounts referred to in this section.

(7) Where any wakf is under the direct management of the Board, such administrative charges as may be specified by the Chief Executive Officer shall be payable by the wakf to the Board:

Provided that the Chief Executive Officer shall not collect more than ten per cent of the gross annual income of the wakf under the direct management of the Board as administrative charges.

Submission of accounts of wakfs.

46. (1) Every mutawalli shall keep regular accounts.

(2) Before the 1st day of May next, following the date on which the application referred to in section 36 has been made and thereafter before the 1st day of May in every year, every mutawalli of a wakf shall prepare and furnish to the Board a full and true statement of accounts, in such form and containing such particulars as may be provided by regulations by the Board, of all moneys received or expended by the mutawalli on behalf of the wakf during the period of twelve months ending on the 31st day of March, or, as the case may be, during that portion of the said period during which the provisions of this Act, have been applicable to the wakf.

Provided that the date on which the annual accounts are to be closed may be varied at the discretion of the Board.

Audit of accounts of wakfs.

47. (1) The accounts of wakfs submitted to the Board under section 46 shall be audited and examined in the following manner, namely:—

(a) in the case of a wakf having no income or a net annual income not exceeding five thousand rupees, the submission of a statement of accounts shall be a sufficient compliance with the provisions of section 46 and the accounts of two per cent. of such wakfs shall be audited annually by an auditor appointed by the Board;

(b) the accounts of a wakf having net annual income exceeding five thousand rupees but not exceeding ten thousand rupees, shall be prepared in the form of a statement of income and expenditure supported by properly maintained vouchers and receipts, and shall be audited triennially or at such other intervals as may be prescribed, by an auditor appointed by the Board;

(c) the accounts of a wakf having a net annual income exceeding ten thousand rupees but not exceeding fifteen thousand rupees,

shall be audited by an auditor appointed by the Board from out of a panel of auditors prepared by the State Government and such audit shall be made biennually or at such other intervals as may be prescribed and while drawing up such panel of auditors, the State Government shall specify the scale of remuneration of auditors;

(*d*) the accounts of a wakf having a net annual income exceeding fifteen thousand rupees, shall be audited by the State Examiner of Local Funds or by any other officer designated for the purpose by the State Government and every such audit shall be made annually or at such other intervals as may be prescribed.

(*2*) The auditor shall submit his report to the Board and the report of the auditor shall, among other things, specify all cases of irregular, illegal or improper expenditure or of failure to recover money or other property caused by neglect or misconduct and any other matter which the auditor considers it necessary to report; and the report shall also contain the name of any person who, in the opinion of the auditor, is responsible for such expenditure or failure and the auditor shall in every such case certify the amount of such expenditure or loss as due from such person.

(*3*) The cost of the audit of the accounts of a wakf shall be met from the funds of that wakf:

Provided that the remuneration of the auditors appointed from out of the panel drawn by the State Government in relation to wakfs having a net annual income of more than ten thousand rupees but less than fifteen thousand rupees shall be paid in accordance with the scale of remuneration specified by the State Government under clause (*c*) of sub-section (*1*);

Provided further that where the audit of the accounts of any wakf is made by the State Examiner of local funds or any other officer designated by the State Government in this behlaf, the cost of such audit shall not exceed one and a half per cent of the net annual income of such wakf and such costs shall be met from the funds of the wakfs concerned.

Board to pass orders on auditor's report.

48. (*1*) The Board shall examine the auditor's report, and may call for the explanation of any person in regard to any matter mentioned therein, and shall pass such orders as it thinks fit including orders for the recovery of the amount certified by the auditor under sub-section (*2*) of section 47.

(*2*) The mutawalli or any other person aggrieved by any order made by the Board may, within thirty days of the receipt by him of the order, apply to the Tribunal to modify or set aside the order and the Tribunal may, after taking such evidence as it may think necessary, confirm or modify the order or remit the amount so certified, either in whole or in part, and may also make such order as to costs as it may think appropriate in the circumstances of the case.

(*3*) No application made under sub-section (*2*) shall be entertained by the Tribunal unless the amount certified by the auditor under sub-section (*2*) of section 47 has first been deposited in the Tribunal and the Tribunal shall not have any power to stay the operation of the order made by the Board under sub-section (*1*).

(4) The order made by the Tribunal under sub-section (2) shall be final.

(5) Every amount for the recovery of which any order has been made under sub-section (1) or sub-section (2) shall, where such amount remains unpaid, be recoverable in the manner specified in section 34 or section 35 as if the said order were an order for the recovery of any amount determined under sub-section (3) of section 35.

Sums certified to be due recoverable as arrears of land revenue.

49. (1) Every sum certified to be due from any person by an auditor in his report under section 47 unless such certificate is modified or cancelled by an order of the Board or of the Tribunal made under section 48, and every sum due on a modified certificate shall be paid by such person within sixty days after the service of a demand for the same issued by the Board.

(2) If such payment is not made in accordance with the provisions of sub-section (1), the sum payable may, on a certificate issued by the Board after giving the person concerned an opportunity of being heard, be recovered in the same manner as an arrear of land revenue.

Duties of mutawalli.

50. It shall be the duty of every mutawalli—

(a) to carry out the directions of the Board in accordance with the provisions of this Act or of any rule or order made thereunder;

(b) to furnish such returns and supply such information or particulars as may from time to time be required by the Board in accordance with the provisions of this Act or of any rule or order made thereunder;

(c) to allow inspection of wakf properties, accounts or records or deeds and documents relating thereto;

(d) to discharge all public dues; and

(e) to do any other act which he is lawfully required to do by or under this Act.

Alienation of wakf property without sanction of Board to be void.

51. (1) Notwithstanding anything contained in the wakf deed, any gift, sale or exchange mortgage of any immovable property which is wakf property, shall be void unless such gift, sale, exchange or mortgage is effected with the prior sanction of the Board.

(2) The Board may, after publishing in the Official Gazette, the particulars relating to the transaction referred to in sub-section (1) and inviting any objections and suggestions with respect thereto and considering all objections and suggestions, if any, that may be received by it from the concerned mutawalli or any other person interested in the wakf, accord sanction to such transaction if it is of opinion that such transaction is—

(i) necessary or beneficial to the wakf;

(ii) consistent with the objects of the wakf;

(iii) the consideration thereof is reasonable and adequate;

Provided that the sale of any property sanctioned by the Board shall be effected by public auction and shall be subject to confirmation by the Board within such time as may be prescribed:

Provided further that the Tribunal may, on the application of the aggrieved mutawalli or other person, for reasons to be recorded by it in writing, permit such sale to be made otherwise than by public auction, if it is of opinion that it is necessary so to do in the interest of the wakf.

(*3*) The utilisation or investment of the amount realised by the sale or exchange mortgage of any property shall be made by the mutawalli subject to the approval of the Board, and where any amount has been raised by mortgage of any such property, the mutawalli or other person shall make repayment of the mortgage-debt and obtain a discharge of the mortgage-debt from the mortgage within such reasonable time as the Board may specify.

(*4*) Every approval given by the Board under sub-section (*3*) shall be communicated to the mutawalli and shall also be published in the manner prescribed.

(*5*) The mutawalli or any other person having an interest in the wakf who is aggrieved by the decision given under sub-section (*3*), may, within ninety days from the date of communication to him of such decision or the publication of the decision, as the case may be, prefer an appeal to the Tribunal against such decision, and, thereupon, the Tribunal may, after giving the appellant and the Board, a reasonable opportunity of being heard, confirm, modify or set aside such decision.

Recovery of wakf property transferred in contravention if section 51.

52. (*1*) If the Board is satisfied, after making any inquiry in such manner as may be prescribed, that any immovable property of a wakf entered as such in the register of wakf maintained under section 36, has been transferred without the previous sanction of the Board in contravention of the provisions of section 51, it may send a requisition to the Collector within whose jurisdiction the property is situate to obtain and deliver possession of the property to it.

(*2*) On receipt of a requisition under sub-section (*1*), the Collector shall pass an order directing the person in possession of the property to deliver the property to the Board within a period of thirty days from the date of the service of the order.

(*3*) Every order passed under sub-section (2) shall be served—

(*a*) by giving or tendering the order, or by sending it by post to the person for whom it is intended; or

(*b*) if such person cannot be found, by affixing the order on some conspicuous part of his last known place of abode or business, or by giving or tendering the order to some adult male member or servant of his family or by causing it to be affixed on some conspicuous part of the property to which it relates:

Provided that where the person on whom the order is to be served is a minor, service upon his guardian or upon any adult male member or servant of his family shall be deemed to be the service upon the minor.

(4) Any person aggrieved by the order of the Collector under sub-section (2) may, within a period of thirty days from the date of the service of the order, prefer an appeal to the Tribunal within whose jurisdiction the property is situate and the decision of the Tribunal on such appeal shall be final.

(5) Where an order passed under sub-section (2) has not been complied with and the time for appealing against such order has expired without an appeal having been preferred or the appeal, if any, preferred within that time has been dismissed, the Collector shall obtain possession of the property in respect of which the order has been made, using such force, if any, as may be necessary for the purpose and deliver it to the Board.

(6) In exercising his functions under this section the Collector shall be guided by such rules as may be provided by regulations.

Restriction on purchase of property on behalf of wakf.

53. Notwithstanding anything contained in a wakf deed, no immovable property shall be purchased for or on behalf of any wakf from the funds of any wakf except with the prior sanction of the Board, and the Board shall not accord such sanction unless it considers that the acquisition of such property is necessary or beneficial to the wakf and that the price proposed to be paid therefor is adequate and reasonable:

Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in the Official Gazette inviting objections and suggestions with respect thereto and, the Board shall, after considering the objections and suggestions that may be received by it from mutawallis or other persons interested in the wakf, make such orders as it may think fit.

Removal of encroachment from wakf property.

54. (1) Whenever the Chief Executive Officer considers whether on receiving any complaint or on his own motion that there has been an encroachment on any land, building, space or other property which is wakf property and, which has been registered as such under this Act, he shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and calling upon him to show cause before a date to be specified in such notice, as to why an order requiring him to remove the encroachment before the date so specified should not be made and shall also send a copy of such notice to the concerned mutawalli.

(2) The notice referred to in sub-section (1) shall be served in such manner as may be prescribed.

(3) If, after considering the objections, received during the period specified in the notice, and after conducting an inquiry in such manner as may be prescribed, the Chief Executive Officer is satisfied that the property in question is wakf property and that there has been an encroachment on any such wakf property, he may, by an order, require the encroacher to remove such encroachment and deliver possession of the land, building, space or other property encroached upon to the mutawalli of the wakf.

(4) Nothing contained in sub-section (3) shall prevent any person aggrieved by the order made by the Chief Executive Officer under that

sub-section from instituting a suit in a Tribunal to establish that he has right, title or interest in the land, building, space or other property:

Provided that no such suit shall be instituted by a person who has been let into possession of the land, building, space or other property as a lessee, licensee or mortgagee by the mutawalli of the wakf or by any other person authorised by him in this behalf.

Enforcement of orders made under section 54.

55. Where the person, ordered under sub-section (*3*) of section 54 to remove any encroachment, omits or fails to remove such encroachment, within the time specified in the order or, as the case may be, fails to vacate the land, building, space or other property to which the order relates, within the time aforesaid, the Chief Executive Officer may apply to the Sub-divisional Magistrate within the local limits of whose jurisdiction the land. building, space or other property is situate for evicting the encroacher, and, thereupon, such Magistrate shall make an order directing the encroacher to remove the encroachment, or, as the case may be vacate the land, building, space or other property, and to deliver possession thereof to the concerned mutawalli and in default of compliance with the order, remove the encroachment or, as the case may be, evict the encroacher from the land, building, space or other property and may, for this purpose, take such police assistance as may be necessary.

Restriction on power to grant lease of wakf property.

56. (*1*) A lease or sub-lease for any period exceeding three years of any immovable property which is wakf property shall, notwithstanding anything contained in the deed or instrument of wakf or in any other law for the time being in force, be void and of no effect.

(*2*) A lease or sub-lease for a period exceeding one year and not exceeding three years of any immovable property which is wakf property shall, notwithstanding anything contained in the deed or instrument of wakf or in any other law for the time being in force, be void and of no effect unless it is made with the previous sanction of the Board.

(*3*) The Board shall, in granting sanction for lease or sub-lease or renewal thereof under this section review the terms and conditions on which the lease or sub-lease is proposed to be granted or renewed and make its approval subject to the revision of such terms and conditions in such manner as it may direct.

Mutawalli entitled to pay certain costs from income of wakf property.

57. Notwithstanding anything contained in the wakf deed, every mutawalli may pay from the income of the wakf property any expenses properly incurred by him for the purpose of enabling him to furnish any particulars, documents or copies under section 36 or any accounts under section 46 or any information or documents required by the Board or for the purpose of enabling him to carry out the directions of the Board.

Power of Board to pay dues in case of default by mutawalli.

58. (*1*) Where a mutawalli refuses to pay or fails to pay any revenue, cess, rates or taxes due to the Government or any local authority, the Board may discharge dues from the Wakf Fund and such recover the amount so paid from the wakf property and may also recover damages not exceeding twelve and a half per cent., of the amount so paid.

(2) Any sum of money due under sub-section (1) may, on a certificate issued by the Board after giving the mutawalli concerned an opportunity of being heard, be recovered in the same manner as an arrear of land revenue.

Creation of reserve fund.

59. For the purpose of making provisions for the payment of rent and of revenue, cess, rates and taxes due to the Government or any local authority, for the discharge of the expenses of the repair of the wakf property and for the preservation of the wakf property, the Board may direct the creation and maintenance, in such manner as it may think fit, of a reserve fund from the income of a wakf.

Extension of time.

60. The Board may, if it is satisfied that it is necessary so to do, extend the time within which any act is required to be done by the mutawalli under this Act.

Penalities.

61. (1) If a mutawalli fails to,—

(a) apply for the registration of a wakfs;

(b) furnish statements of particulars or accounts or returns as required under this Act;

(c) supply information or particulars as required by the Board;

(d) allow inspection of wakf properties, accounts records or deeds and documents relating thereto;

(e) deliver possession of any wakf property, if ordered by the Board or Tribunal;

(f) carry out the directions of the Board;

(g) discharge any public dues; or

(h) do any other act which he is lawfully required to do by or under this Act,

he shall, unless he satisfies the court or the Tribunal that there was reasonable cause for his failure, be punishable with fine which may extend to eight thousand rupees.

(2) Notwithstanding anything contained in sub-section (1), if—

(a) a mutawalli omits or fails, with a view to concealing the existence of a wakf, to apply for its registration under this Act,—

(i) in the case of a wakf created before the commencement of this Act, within the period specified therefor in sub-section (8) of section 36;

(ii) in the case of any wakf created after such commencement, within three months from the date of the creation of the wakf; or

(b) a mutawalli furnishes any statement, return or information to the Board, which he knows or has reason to believe to be false, misleading, untrue or incorrect in any material particular,

he shall be punishable with imprisonment for a term which may extend to six months and also with fine which may extend to fifteen thousand rupees.

(*3*) No court shall take cognizance of an offence punishable under this Act save upon complaint made by the Board or an officer duly authorised by the Board in this behalf.

(*4*) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

2 of 1974. (*5*) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the fine imposed under sub-section (*1*), when realised, shall be credited to the Wakf Fund.

(*6*) In every case where an offender is convicted after the commencement of this Act, of an offence punishable under sub- section (*1*) and sentenced to a fine, the Court shall also impose such term of imprisonment in default of payment of fine as is authorised by law for such default.

Mutawalli not to spend any money belonging to wakf for self defence.

62. No mutawalli shall spend any money out of the funds of the wakf, of which he is the mutawalli, for meeting any costs, charges, or expenses which are or may be, incurred by him, in relation to any suit, appeal or any other proceeding for or incidental to, his removal from offence or for taking any disciplinary action against himself.

Power to appoint mutawallis in certain cases.

63. When there is a vacancy in the office of the mutawalli of a wakf and there is no one to be appointed under the terms of the deed of the wakf, or where the right of any person to act as mutawalli is disputed, the Board may appoint any person to act as mutawalli for such period and on such conditions as it may think fit.

Removal of mutawalli.

64. (*1*) Notwithstanding anything contained in any other law or the deed of wakf, the Board may remove a mutawalli from his office if such mutawalli—

(*a*) has been convicted more than once of an offence punishable under section 61; or

(*b*) has been convicted of any offence of criminal breach of trust or any other offence involving moral turpitude, and such conviction has not been reversed and he has not been granted full pardon with respect to such offence; or

(*c*) is of unsound mind or is suffering from other mental or physical defect or infirmity which would render him unfit to perform the functions and discharge the duties of a mutawalli; or

(*d*) is an undischarged insolvent; or

(*e*) is proved to be addicted to drinking liquor or other spirituous preparations, or is addicted to the taking of any narcotic drugs; or

(*f*) is employed as a paid legal practitioner on behalf of, or against, the wakf; or

(*g*) has failed, without reasonable excuse, to maintain regular accounts for two consecutive years or has failed to submit, in two consecutive years, the yearly statement of accounts, as required by sub-section (*2*) of section 46; or

(*h*) is interested, directly or indirectly, in a subsisting lease in respect of any wakf property, or in any contract made with, or any work being done for, the wakf or is in arrears in respect of any sum due by him to such wakf; or

(*i*) continuously neglects his duties or commits any misfeasance, malfeasance, misapplication of funds or breach of trust in relation to the wakf or in respect of any money or other wakf property; or

(*j*) wilfully and persistently disobeys the lawful orders made by the Central Government, State Government, Board under any provision of this Act or rule or order made thereunder.

(*2*) The removal of a person from the office of the mutawalli shall not affect his personal rights, if any, in respect of the wakf property either as a beneficiary or in any other capacity or his right, if any, as a sajjadanashin.

(*3*) No action shall be taken by the Board under sub-section (*1*), unless it has held an inquiry into the matter in a prescribed manner and the decision has been taken by a majority of not less than two-thirds of the members of the Board.

(*4*) A mutawalli who is aggrieved by an order passed under any of the clauses (*c*) to (*j*) of sub-section (*1*), may, within one month from the date of the receipt by him of the order, appeal against the order to the Tribunal and the decision of the Tribunal on such appeal shall be final.

(*5*) Where any inquiry under sub-section (*3*) is proposed, or commenced, against any mutawalli, the Board may, if it is of opinion that it is necessary so to do in the interest of the wakf, by an order suspend such mutawalli until the conclusion of the inquiry:

Provided that no suspension for a period exceeding ten days shall be made except after giving the mutawalli a reasonable opportunity of being heard against the proposed action.

(*6*) Where any appeal is filed by the mutawalli to the Tribunal under sub-section (*4*), the Board may make an application to the Tribunal for the appointment of a receiver to manage the wakf pending the decision of the appeal, and where such an application is made, the Tribunal shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, appoint a suitable person as receiver to manage the wakf and direct the receiver so appointed to ensure that the customary or religious rights of the mutawalli and of the wakf are safeguarded. 5 of 1908.

(*7*) Where a mutawalli has been removed from his office under sub-section (*1*), the Board may, by order, direct the mutawalli to deliver possession of the wakf property to the Board or any officer duly authorised in this behalf or to any person or committee appointed to act as the mutawalli of the wakf property.

(*8*) A mutawalli of a wakf removed from his office under this section shall not be eligible for re-appointment as a mutawalli of that wakf for a period of five years from the date of such removal.

Assumption of direct management of certain wakfs by the Board.

65. (*1*) Where no suitable person is available for appointment as a mutawalli of a wakf, or where the Board is satisfied, for reasons to be recorded by it in writing, that the filling up of the vacancy in the office of a mutawalli is prejudicial to the interests of the wakf, the Board may, by notification in the Official Gazette, assume direct management of the wakf for such period or periods, not exceeding five years in the aggregate, as may be specified in the notification.

(*2*) The State Government, may, on its own motion or on the application of any person interested in the wakf, call for the records of any case for the purpose of satisfying itself as to the correctness, legality or propriety of the notification issued by the Board under sub-section (*1*) and pass such orders as it may think fit and the orders so made by the State Government shall be final and shall be published in the manner specified in sub-section (*1*).

(*3*) As soon as possible after the close of evey financial year, the Board shall send to the State Government a detailed report in regard to every wakf under its direct management, giving therein—

(*a*) the details of the income of the wakf for the year immediately preceding the year under report;

(*b*) the steps taken to improve the management and income of the wakf;

(*c*) the period during which the wakf has been under the direct management of the Board and explaining the reasons as to why it has not been possible to entrust the management of the wakf to the mutawalli or any committee of management during the year; and

(*d*) such other matters as may be prescribed.

(*4*) The State Government shall examine the report submitted to it under sub-section (*3*), and after such examination issue such directions or instructions to the Board as it may think fit and the Board shall comply with such directions or instructions on receipt thereof.

Powers of appointment and removal of mutawalli when to be exercised by the State Government.

66. Whenever a deed of wakf or any decree or order of a court or any scheme of management of any wakf provides that a court or any authority other than a Board may appoint or remove a mutawalli or settle or modify such scheme of management or otherwise exercise superintendence over the wakf, then notwithstanding anything contained in such deed of wakf, decree, order or scheme, such powers aforesaid shall be exercisable by the State Government.

Supervision and supersession of committee of management.

67. (*1*) Whenever the supervision or management of a wakf is vested in any committee appointed by the wakif, then, notwithstanding anything contained in this Act, such committee shall continue to function until it is superseded by the Board or until the expiry of its term as may be specified by the wakif, whichever is earlier:

Provided that such committee shall function under the direction, control and supervision of the Board and abide by such directions as the Board may issue from time to time:

Provided further that if the Board is satisfied that any scheme for the management of a wakf by a committee is inconsistent with any provision of this Act or of any rule made thereunder or with the directions of the wakif, it may, at any time, modify the scheme in such manner as may be temporarily filled by general candidtes in accordance with the pro- of the provisions of this Act and the rules made thereunder.

(2) Notwithstanding anything contained in this Act and in the deed of the wakf, the Board may, if it is satisfied, for reasons to be recorded in writing, that a committee, referred to in sub-section (1) is not functioning properly and satisfactorily, or that the wakf is being mismanaged and that in the interest of its proper management, it is necessary so to do, by an order, supersede such committee, and, on such supersession, any direction of the wakif, in so far as it relates to the constitution of the committee, shall cease to have any force:

Provided that the Board shall, before making any order superseding any committee, issue a notice setting forth therein the reasons for the proposed action and calling upon the committee to show cause within such time, not being less than one month, as may be specified in the notice, as to why such action shall not be taken.

(3) Every order made by the Board under sub-section (2) shall be published in the prescribed manner and on such publication shall be binding on the mutawalli and all persons having any interest in the wakf.

(4) Any order made by the Board under sub-section (2) shall be final:

Provided that any person aggrieved by the order made under sub-section (2) may, within sixty days from the date of the order, appeal to the Tribunal:

Provided further that the Tribunal shall have no power to suspend the operation of the order made by the Board pending such appeal.

(5) The Board shall, whenever it supersedes any committee under sub-section (2), constitute a new committee of management simultaneously with the order made by it under sub-section (2).

(6) Notwithstanding anything contained in the foregoing sub-sections, the Board may, instead of superseding any committee under sub-section (2), remove any member thereof if it is satisfied that such member has abused his position as such member or had knowingly acted in a manner prejudicial to the interests of the wakf, and every such order for the removal of any member shall be served upon him by registered post:

Provided that no order for the removal of the member shall be made unless he has been given a reasonable opportunity of showing cause against the proposed action:

Provided further that any member aggrieved by any order for his removal from the membership of the committee, may, within a period of thirty days from the date of service of the order on him, prefer an appeal against such order to the Tribunal, and the Tribunal may, after

giving a reasonable opportunity to the appellant and the Board of being heard, confirm, modify or reverse the order made by the Board and the order made by the Tribunal in such appeal shall be final.

Duty of mutawalli or committee to deliver possession of records, etc.

68. (*1*) Where any mutawalli or committee of management has been removed by the Board in accordance with the provisions of this Act, or of any scheme made by the Board, the mutawalli or the committee soremoved from the office (hereinafter in this section referred to as the removed mutawalli or committee) shall hand over charge and deliver possession of the records, accounts and all properties of the wakf (including cash) to the successor mutawalli or the successor committee, within one month from the date of specified in the order.

(*2*) Where any removed mutawalli or committee fails to deliver charge or deliver possession of the records, accounts and properties (including cash) to the successor mutawalli or committee within the time specified in sub-section (*1*), or prevents or obstructs such mutawalli or committee, from obtaining possession thereof after the expiry of the period aforesaid, the successor mutawalli or any member of the successor committee may make an application, accompanied by a certified copy of the order appointing such successor mutawalli or committee, to any Magistrate of the first class within the local limits of whose jurisdiction any part of the wakf property is situate and, thereupon, such Magistrate may, after giving notice to the removed mutawalli or members of the removed committee, make an order directing the delivery of charge and possession of such records, accounts and properties (including cash) of the wakf to the successor mutawalli or the committee, as the case may be, within such time as may be specified in the order.

(*3*) Where the removed mutawalli or any member of the removed committee, omits or fails to deliver charge and possession of the records, accounts and properties (including cash) within the time specified by the Magistrate under sub-section (*2*), the removed mutawalli or every member of the removed committee, as the case may be, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to eight thousand rupees, or with both.

(*4*) Whenever any removed mutawalli or any member of the removed committee omits or fails to comply with the orders made by the Magistrate under sub-section (*2*), the Magistrate may authorise the successor mutawalli or committee to take charge and possession of such records, accounts, properties (including cash) and may authorise such person to take such police assistance as may be necessary for the purpose.

(*5*) No order of appointment of the successor mutawalli or committee shall be called in question in the proceedings before the Magistrate under this section.

(*6*) Nothing contained in this section shall bar the institution of any suit in a competent civil court by any person aggrieved by any order made under this section, to establish that he has right, title and interest in the properties specified in the order made by the Magistrate under sub-section (*2*).

Power of Board to frame scheme for administration of wakf.

69. (*1*) Whenever the Board is satisfied, whether on its own motion or on the application of not less than five persons interested in any wakf, that it is necessary or desirable to frame a scheme for the proper administration of the wakf, it may by an order frame such scheme for the administration of the wakf, after consultation with the mutawalli or the applicant, in the prescribed manner.

(*2*) A scheme framed under sub-section (*1*) may provide for the removal of the mutawalli of the wakf holding office as such immediately before the date on which the scheme comes into force:

Provided that where any such scheme provides for the removal of any hereditary mutawalli, the scheme shall also provide for the appointment of the person next in hereditary succession to the mutawalli so removed, as one of the members of the committee appointed for the proper administration of the wakf.

(*3*) Every order made under sub-section (*2*) shall be published in the prescribed manner, and, on such publication shall be final and binding on the mutawalli and all persons interested in the wakf:

Provided that any person aggrieved by an order made under this section may, within sixty days from the date of the order, prefer an appeal to the Tribunal and after hearing such appeal, the Tribunal may confirm, reverse or modify the order:

Provided further that the Tribunal shall have no power to stay the operation of the order made under this section.

(*4*) The Board may, at any time by an order, whether made before or after the scheme has come into force, cancel or modify the scheme.

(*5*) Pending the framing of the scheme for the proper administration of the wakf, the Board may appoint a suitable person to perform all or any of the functions of the mutawalli thereof and to exercise the powers, and perform the duties, of such mutawalli.

Inquiry relating to administration of wakf.

70. Any person interested in a wakf may make an application to the Board supported by an affidavit to institute an inquiry relating to the administration of the wakf and if the Board is satisfied that there are reasonable grounds for believing that the affairs of the wakf are being mismanaged, it shall take such action thereon as it thinks fit.

Manner of holding inquiry.

71. (*1*) The Board may, either on an application received under section 73 or on its own motion,—

(*a*) hold an inquiry in such manner as may be prescribed; or

(*b*) authorise any person in this behalf to hold an inquiry into any matter relating to a wakf and take such action as it thinks fit.

(*2*) For the purposes of an inquiry under this section, the Board or any person authorised by it in this behalf, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 for enforcing the attendance of witnesses and production of documents. 5 of 1908.

CHAPTER VII

FINANCE OF THE BOARD

Annual contribution payable to Board.

72. (*1*) The mutawalli of every wakf. the net annual income of which is not less than five thousand rupees, shall pay annually, out of the net annual income derived by the wakf, such contributions, not exceeding seven per cent. of such annual income, as may be prescribed, to the Board for the services rendered by such Board to the wakf.

Explanation I.—For the purposes of this Act, "net annual income" shall mean the gross income of the wakf from all sources, including nazars and offerings which do not amount to contributions to the corpus of the wakfs, in a year after deducting therefrom the following, namely:—

(*i*) the land revenue paid by it to the Government;

(*ii*) the rates, cessers, taxes and licence fees, paid by it to the Government or any local authority;

(*iii*) expenditure incurred for all or any of the following purposes, namely:—

(*a*) maintenance of, or repairs to, irrigation works, which shall not include the capital cost of irrigation;

(*b*) seeds or seedlings;

(c) manure;

(*d*) purchase and maintenance of agricultural implements;

(*e*) purchase and maintenance of cattle for cultivation;

(f) wages for ploughing, watering, sowing, transplanting, harvesting, threshing and other agricultural operations:

Provided that the total deduction in respect of an expenditure incurred under this clause shall not exceed ten per cent. of the income derived from the lands belonging to the wakf;

(*iv*) expenditure on sundry repairs to rented buildings, not exceeding five per cent. of the annual rent derived therefrom, or the actual expenditure, whichever is less;

(*v*) sale proceeds of immovable properties or rights relating to, or arising out of immovable properties, if such proceeds are reinvested to earn income for the wakf;

Provided that the following items of receipts shall not be deemed to be income for the purposes of this section, namely:—

(*a*) advances and deposits recovered and loans taken or recovered;

(*b*) deposits made as security by employees, lessers or contractors and other deposits, if any;

(c) withdrawals from banks or of investments;

(*d*) amounts recovered towards costs awarded by courts;

(*e*) sale proceeds of religious books and publications where such sales are undertaken as an un-remunerative enterprise with a view to propagating religion;

(*f*) donations in cash or kind or offerings made by the donors as contribution to the corpus of the wakf:

Provided that the interest on income, if any, accruing from such donations or offerings shall be taken into account in calculating the gross annual income;

(*g*) voluntary contributions received cash or kind for a specific service to be performed by the wakf and expended on such service;

(*h*) audit recoveries.

Explanation II.—In determining, the net annual income for the purposes of this section, only the net profit derived by any wakf from its remunerative undertakings, if any, shall be taken as income, and in respect of its non-remunerative undertakings, such as, schools, colleges, hospitals, poor homes, orphanages or any other similar institutions, the grants given by the Government or any local authority or donations received from the public or fees collected from the pupils of educational institutions shall not be taken as income.

(2) The Board may in the case of any mosque or orphanage or any particular wakf reduce or remit such contribution for such time as it thinks fit.

(3) The mutawalli of a wakf may realise the contributions payable by him under sub-section (*1*) from the various persons entitled to receive any pecuniary or other material benefit from the wakf, but the sum realisable from any one of such persons shall not exceed such amount as shall bear to the total contribution payable the same proportion, as the value of the benefits receivable by such person bears to the entire net annual income of the wakf:

Provided that if there is any income of the wakf available in excess of the amount payable as dues under this Act, other than as the contribution under sub-section (*1*), and in excess of the amount payable under the wakf deed, the contribution shall be paid out of such income.

(4) The contribution payable under sub-section (1) in respect of a wakf shall, subject to the prior payment of any dues to the Government or any local authority or of any other statutory first charge on the wakf property or the income thereof, be a first charge on the income of the wakf and shall be recoverable, on a certificate issued by the Board after giving the mutawalli concerned an opportunity of being heard, as an arrear of land revenue.

(5) If a mutawalli realise the income of the wakf and refuses to pay or does not pay such contribution, he shall also be personally liable for such contribution which may be realised from his person or property in the manner aforesaid.

(*6*) Where, after the commencement of this Act, the mutawalli of a wakf fails to submit a return of the net annual income of the wakf within the

time specified therefor or submits a return which, in the opinion of the Chief Executive Officer is incorrect or false in any material particular, or which does not comply with the provisions of this Act or any rule or order made thereunder, the Chief Executive Officer may assess the net annual income of the wakf to the best of his judgment or revise the net annual income as shown in the return submitted by the mutawalli and the net annual income as so assessed or revised shall be deemed to be the net annual income of the wakf for the purposes of this section:

Provided that no assessment of net annual income or revision of return submitted by mutawalli shall be made except after giving a notice to the mutawalli calling upon him to show cause, within the time specified in the notice, as to why such assessment or revision of the return shall not be made and every such assessment or revision shall be made after considering the reply if any, given by the mutawalli.

(7) Any mutawalli who is aggrieved by the assessment or revision made by the Chief Executive Officer, under sub-section (*6*), may prefer an appeal to the Board within thirty days from the date of the receipt of the assessment or revision of return and the Board may, after giving the appellant a reasonable opportunity of being heard, confirm, reverse or modify the assessment or revision of the return and the decision of the Board thereon shall be final.

(*8*) If, for any reason, the contribution or any portion thereof leviable under this section has escaped assessment in any year, whether before or after the commencement of this Act, the Chief Executive Officer may, within five years from the last date of the year to which such escaped assessment relates, serve upon the mutawalli a notice assessing him with the contribution or portion thereof which had escaped assessment, and demanding payment thereof within thirty days from the date of service of such notice, and the provisions of this Act and the rules made thereunder, shall, as far as may be, apply as if the assessments were made under this Act, in the first instance.

Power of Chief Executive Officer to direct banks or other person to make payments.

73. (*1*) Notwithstanding anything contained in any other law for the time being in force, the Chief Executive Officer, if he is satisfied that it is necessary and expedient so to do, make an order directing any bank in which, or any person with whom any money belonging to a wakf is deposited, to pay the contribution, leviable under section 72, out of such money, as may be standing to the credit of the wakf in such bank or may be deposited with such person, or out of the moneys which may, from time to time, be received by bank or other person for or on behalf of the wakf by may of deposit, and on receipt of such orders, the bank or the other person, as the case may be, shall, when no appeal has been preferred under sub-section (*3*), comply with such orders, or where an appeal has been preferred under sub-section (*3*), shall comply with the orders made by the Tribunal on such appeal.

(*2*) Every payment made by a bank or other person in pursuance of any order made under sub-section (*1*) shall operate as a full discharge of the liability of such bank or other person in relation to the sum so paid.

(*3*) Any bank or other person who is ordered under sub-section (*1*) to make any payment may, within thirty days from the date of the order,

prefer an appeal against such order to the Tribunal and the decision of the Tribunal on such appeal shall be final.

(4) Every officer of the bank or other person who fails, without any reasonable excuse, to comply with the order made under sub-section (1) or, as the case may be, under sub-section (3), shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to eight thousand rupees, or with both.

Deduction of contribution from perpetual annuity payable to the wakf.

74. (1) Every authority empowered to disburse any perpetual annuity payable to a wakf under any law relating to the abolition of zamindaries or jagirs, or laying down land ceilings, shall, on receipt of a certificate from the Chief Executive Officer, specifying the amount of contribution payable by the wakf under section 72 which remains unpaid, deduct before making payment of the perpetual annuity to the wakf, the amount specified in such certificate and remit the amount so deducted to the Chief Executive Officer.

(2) Every amount remitted under sub-section (1) to the Chief Executive Officer shall be deemed to be a payment made by the wakf and shall, to the extent of the amount so remitted, operated as a full discharge of the liability of such authority with regard to the payment of the perpetual annuity.

Power of Board to borrow.

75. (1) For the purpose of giving effect to the provisions of this Act, the Board may, with the previous sanction of the State Government, borrow such sum of money and on such terms and conditions as the State Government may determine.

(2) The Board shall repay the money borrowed, together with any interest or costs due in respect thereof, according to the terms and conditions of the loan.

Mutawalli not to lend or borrow moneys without sanction.

76. (1) Notwithstanding anything contained in a deed of wakf, no mutawalli, Executive Officer or other person in charge of the administration of a wakf shall lend any money belonging to the wakf or any wakf property or borrow any money for the purposes of the wakf except with the previous sanction of the Board.

(2) The Board may, while according sanction, specify any terms and conditions subject to which the person referred to in sub-section (1) is authorised by him to lend or borrow any money or lend any other wakf property.

(3) Where any money is lent or borrowed, or other wakf property is lent in contravention of the provisions of this section, it shall be lawful for the Chief Executive Officer,—

(a) to recover an amount equal to the amount which has been so lent or borrowed, together with interest due thereon, from the personal funds of the person by whom such amount was lent or borrowed;

(b) to recover the possession of the wakf property lent in contravention of the provisions of this Act, from the person to whom it was lent, or from persons who claim title to such property through the person to whom such property was lent.

Wakf Fund.

77. (*1*) All moneys received or realised by the Board under this Act and all other moneys received as donations, benefactions or grants by the Board shall form a fund to be called the Wakf Fund.

(*2*) All moneys received by the Board, as donations, benefactions and grants shall be deposited and accounted for under a separate sub-head.

(*3*) Subject to any rules that may be made by the State Government in this behalf, the Wakf Fund shall be under the control of the Board, so, however, that the Wakf Fund under the control of common Wakf Board shall be subject to rules, if any, made in this behalf by the Central Government.

(*4*) The Wakf Fund shall be applied to—

(*a*) repayment of any loan incurred under section 75 and payment of interest thereon;

(*b*) payment of the cost of audit of the Wakf Fund and the accounts of wakfs;

(*c*) payment of the salary and allowances to the Officers and staff of the Board;

(*d*) payment of travelling allowances to the Chairperson, members, of the Board;

(*e*) payment of all expenses incurred by the Board in the performance of the duties imposed, and the exercise of the powers conferred, by or under this Act.

(*5*) If any balance remains after meeting the expenditure referred to in sub-section (*4*), the Board may use any portion of such balance for the preservation and protection of wakf properties or for such other purposes as it may deem fit.

Budget of Board.

78. (*1*) The Board shall in every year prepare, in such form and at such time as may be prescribed, a budget for the next financial year showing the estimated receipts and expenditure during that financial year and forward a copy of the same to the State Government.

(*2*) On receipt of the budget forwarded to it under sub-section (*1*), the State Government shall examine the same and suggest such alterations, corrections, or modifications to be made therein as it may think fit and forward such suggestions to the Board for its consideration.

(*3*) On receipt of the suggestions from the State Government the Board may make written representations to that Government with regard to the alterations, corrections or modifications suggested by that Government and the State Government shall after considering such representations, communicate, within a period of three weeks from the date of receipt thereof, to the Board its final decision in relation to the matter and the decision of the State Government shall be final.

(*4*) On receipt of the decision of the State Government under sub-section (*3*), the Board shall incorporate in its budget all the alternations, corrections, modifications finally suggested by the State Government and the budget as so altered, corrected or modified, shall be the budget which shall be passed by the Board.

Accounts of Board.

79. The Board shall cause to be maintained such books of account and other books in relation to its accounts in such form and in such manner as may be provided by regulations.

Audit of accounts of Board.

80. (*1*) The accounts of the Board shall be audited and examined annually by such auditor as may be appointed by the State Government.

(*2*) The auditor shall submit his report to the State Government and the report of the auditor shall, among other things, specify whether the accounts of every wakf under the direct management of the Board have been kept separately and whether such accounts have been audited annually by the State Examiner of Local Funds and shall also specify all cases of irregular, illegal or improper expenditure or of failure to recover money or other property caused by neglect or misconduct and any other matter which the auditor considers it necessary to report; and the report shall also contain the name of any person who, in the opinion of the auditor, is responsible for such expenditure or failure and the auditor shall in every such case certify the amount of such expenditure or loss as due from such person.

(*3*) The cost of the audit shall be paid from the Wakf Fund.

State Government to pass orders on auditor's report.

81. The State Government shall examine the auditor's report and may call for the explanation of any person in regard to any matter mentioned therein, and shall pass such orders on the report as it thinks fit.

Dues of board to be recovered as arrears of land-revenue.

82. (*1*) Every sum certified to be due from any person by an auditor in his report under section 80, be paid by such person within sixty days after the service of a demand notice by the Board.

(*2*) If such payment is not made in accordance with the provisions of sub-section (*1*), the sum payable may, on a certificate issued by the Board, after giving the person concerned an opportunity of being heard, be recovered as an arrear of land revenue.

CHAPTER VIII

JUDICIAL PROCEEDINGS

Constitution of Tribunals etc.

83. (1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a wakf or wakf property under this Act and define the local limits and jurisdiction under this Act of each of such Tribunals.

(2) Any mutawalli person interested in a wakf or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the wakf.

(3) Where any application made under sub-section (1) relates to any wakf property which falls within the territorial limits of the jurisdiction of two or more Tribunals, such application may be made to the Tribunal within the local limits of whose jurisdiction the mutawalli or any one of the mutawallis of the wakf actually and voluntarily resides, carries on business or personally works for gain, and, where any such application is made to the Tribunal aforesaid, the other Tribunal or Tribunals having jurisdiction shall not entertain any application for the determination of such dispute, question or other matter:

Provided that the State Government may, if it is of opinion that it is expedient in the interest of the wakf or any other person interested in the wakf or the wakf property to transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question or other matter relating to such wakf or wakf property transfer such application to any other Tribunal having jurisdiction, and, on such transfer, the Tribunal to which the application is so transferred shall deal with the application from the stage which was reached before the Tribunal from which the application has been so transferred, except where the Tribunal is of opinion that it is necessary in the interests of justice to deal with the application afresh.

(4) Every Tribunal shall consist of one person, who shall be a member of the State Judicial Service holding a rank, not below that of a District, Sessions or Civil Judge, Class I, and the appointment of every such person may be made either by name or by designation.

(5) The Tribunal shall be deemed to be a civil court and shall have the same powers as may be exercised by a civil court under the Code of Civil Procedure, 1908, while trying a suit, or executing a decree or order.

5 of 1908.

(6) Notwithstanding anything contained in the Code of Civil Procedure, 1908, the Tribunal shall follow such procedure as may be prescribed.

5 of 1908.

(7) The decision of the Tribunal shall be final and binding upon the parties to the application and it shall have the force of a decree made by a civil court.

(8) The Execution of any decision of the Tribunal shall be made by the civil court to which such decision is sent for execution in accordance with the provisions of the Code of Civil Procedure, 1908.

5 of 1908.

(9) No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal:

Provided that a High Court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other order as it may think fit.

Tribunal to hold proceedings expeditiously and to furnish to the parties copies of its decision.

84. Whenever an application is made to a Tribunal for the determination of any dispute, question or other matter relating to a wakf or wakf property it shall hold its proceedings as expeditiously as possible and shall as soon as practicable, on the conclusion of the hearing of such matter give its decision in writing and furnish a copy of such decision to each of the parties to the dispute.

Bar of jurisdiction of civil courts.

85. No suit or other legal proceeding shall lie in any civil court in respect of any dispute, question or other matter relating to any wakf, wakf property or other matter which is required by or under this Act to be determined by a Tribunal.

Appointment of a receiver in certain cases.

86. Notwithstanding anything contained in the Code of Civil Procedure, 1908, or in any other law for the time being in force, where any suit or other legal proceeding is instituted or commenced— 5 of 1908.

(*a*) by or on behalf of a Board—

(*i*) to set aside the sale of any immovable property, which is wakf property, in execution of a decree or order of a civil court;

(*ii*) to set aside the transfer of any immovable property, which is wakf property, made by the mutawalli thereof, whether for valuable consideration or not, without or otherwise than in accordance with the sanction of the Board;

(*iii*) to recover possession of the property referred to in clause (*a*) or clause (*b*) or to restore possession of such property to the mutawalli of the concerned wakf; or

(*b*) by a mutawalli to recover possession of immovable property, which is wakf property, which has been transferred by a previous mutawalli, whether for valuable consideration or not, without otherwise than in accordance with the sanction of the Board, and which is in the possession of the defendant,

the court may, on the application of the plaintiff, appoint a receiver of such property and direct such receiver to pay from time to time to the plaintiff, out of the income of the property, such amount as the court may consider to be necessary for further prosecution of the suit.

Bar to the enforcement of right on behalf of unregistered wakfs.

87. (*1*) Notwithstanding anything contained in any other law for the time being in force, no suit, appeal or other legal proceeding for the enforcement of any right on behalf of any wakf which has not been registered in accordance with the provisions of this Act, shall be instituted or commenced or heard, tried or decided by any court after the commencement of this Act, or where any such suit, appeal or other legal proceeding had been instituted or commenced before such commencement, no such suit, appeal or other legal proceeding shall be continued, heard, tried or decided by any court after such commenment unless such wakf has been registered, in accordance with the provisions of this Act.

(2) The provisions of sub-section (1) shall apply as far as may be, to the claim for set-off or any other claim made on behalf of any wakf which has not been registered in accordance with the provisions of this Act.

Bar to challenge the validity of any notification, etc.

88. Save as otherwise expressly provided in this Act, no notification or order or decision made, proceeding or action taken, by the Central Government or the State Government under this Act or any rule made thereunder shall be questioned in any civil court.

Notice of suits by parties against Board.

89. No suit shall be instituted against the Board in respect of any act purporting to be done by it in pursuance of this Act or of any rules made thereunder, until the expiration of two months next after notice in writing has been delivered to, or left at, the office of the Board, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

Notice of suits, etc., by courts.

90. (1) In every suit or proceeding relating to a title to or possession of a wakf property or the right of a mutawalli or beneficiary, the court or Tribunal shall issue notice to the Board at the cost of the party instituting such suit or proceeding.

(2) Whenever any wakf property is notified for sale in execution of a decree of a civil court or for the recovery of any revenue, cess, rates of taxes due to the Government or any local authority, notice shall be given to the Board by the court, Collector or other person under whose order the sale is notified.

(3) In the absence of a notice under sub-section (1), any decree or order passed in the suit or proceeding shall be declared void, if the Board, within one month of its coming to know of such suit or proceeding, applies to the court in this behalf.

(4) In the absence of a notice under sub-section (2), the sale shall be declared void, if the Board, within one month of its coming to know of the sale, applies in this behalf to the court or other authority under whose order the sale was held.

Proceedings under Act 1 of 1894.

91. (1) If, in the course of proceedings under the Land Acquisition Act, 1894 or under any other law for the time being in force relating to the acquisition of land or other property, it appears to the Collector before an award is made that any property under acquisition is wakf property, a notice of such acquisition shall be served by the Collector of the Board and further proceedings shall be stayed to enable the Board to appear and plead as a party to the proceeding at any time within three months from the date of the receipt of such notice.

Explanation.—The reference to the Collector in the foregoing provisions of this sub-section shall, in relation to any other law referred to therein, be construed, if the Collector is not the competent authority under such other law to make an award of the compensation or other amount payable for acquisition of land or other property thereunder, as

a reference to the authority under such other law competent to make such award.

(*2*) Where the Board has reason to believe that any property under acquisition is wakf property, it may at any time before the award is made appear and plead as a party to the proceeding.

(*3*) When the Board has appeared under the provisions of sub-section (*1*) or sub-section (*2*), no order shall be passed under section 31 or section 32 of the Land Acquisition Act, 1894 or under the corresponding provisions of the other law referred to in sub-section (*1*) without giving an opportunity to the Board to be heard.

(*4*) Any order passed under section 31 or section 32 of the Land Acquisition Act, 1894 or under the corresponding provisions of the other law referred to in sub-section (*1*) without giving an opportunity to the Board to be heard, shall be declared void, if the Board, within one month of its coming to know of the order, applies in this behalf to the authority which made the order.

Board to be party to suit or proceeding.

92. In any suit or proceeding in respect of a wakf or any wakf property the Board may appear and plead as a party to the suit or proceeding.

Bar to compromise of suits by or against mutawallis.

93. No suit or proceeding in any court by or against the mutawalli of a wakf relating to title to wakf property or the rights of the mutawalli shall be compromised without the sanction of the Board.

Power to make application to the Tribunal in case of failure of mutafalli to discharge his duties.

94. (*1*) Where a mutawalli is under an obligation to perform any act which is recognised by Muslim law as pious, religious or charitable and the mutawalli fails to perform such act, the Board may apply to the Tribunal for an order directing the mutawalli to pay to the Board or to any person authorised by the Board in this behalf the amount necessary for the performance of such act.

(*2*) Where a mutawalli is under an obligation to discharge any other duties imposed on him under the wakf and the mutawalli wilfully fails to discharge such duties, the Board or any person interested in the wakf may make an application to the Tribunal and the Tribunal may pass such order thereon as it thinks fit.

Power of appellate authority to entertain appeal after expiry of specified period.

95. Where, under this Act any period has been specified for the filing of any appeal, the appellate authority may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the period so specified, entertain the appeal after the expiry of the said period..

CHAPTER IX

MISCELLANEOUS

Power of Central Government to regulate secular activities of wakfs.

96. (*1*) For the purpose of regulating the secular activities of wakfs, the Central Government shall have the following powers and functions, namely:—

(*a*) to lay down general principles, and policies of wakf administration in so far as they relate to the secular activities of the wakfs;

(*b*) to co-ordinate the functions of the Central Wakf Council and the Board, in so far as they relate to their secular functions;

(*c*) to review administration of the secular activities of wakfs generally and to suggest improvements, if any.

(*2*) In exercising its powers and functions under sub-section (*1*), the Central Government may call for any periodic or other reports from any Board and may issue to the Board such directions as it may think fit and the Board shall comply with such directions.

Explanation.—For the purposes of this section "secular activities" shall include social, economic, educational and other welfare activities.

Directions by State Government.

97. Subject to any directions issued by the Central Government under section 96, the State Government may, from time to time, give to the Board such general or special directions as the State Government thinks fit and in the performance of its functions, the Board shall comply with such directions.

Annual report by State Government.

98. As soon as may be after the close of a financial year, the State Government shall cause a general annual report on the working and administration of the State Wakf Board and the Administration of wakfs in the State during that year to be prepared and laid before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House, and every such report shall be in such form and shall contain such matters as may be provided by regulations.

Powers of revision of the State Government.

99. Save as otherwise provided in this Act, the State Government may either on its own motion or on an application made to it by a mutawalli or any other person interested in the wakf, call for and examine the record of the Board, in respect of any proceeding (not being a proceeding relating to a matter in respect of which a suit has been instituted, appeal has been filed or application has been made to a court or any proceeding arising out of an application made to the Tribunal) to satisfy itself as to the regularity of such proceedings or the correctness, legality or propriety of any decision or order passed in such proceedings, and, if in any case, it appears to the State Government that any such decision or order should be modified, annulled, reversed or remitted to the Board for reconsideration, the State Government may pass orders accordingly:

Provided that no such order shall be made except after giving to the person who is likely to be prejudicially affected thereby a reasonable opportunity of making his representations against the proposed action.

(*2*) No application shall be entertained under sub-section (*1*) in respect of any matter unless an application in relation to the said matter

had already been made to the Board and had been disposed of by the Board.

(3) Every application referred to in sub-section (1) shall be made within a period of three months from the date on which the order made in the proceeding to which the application relates, was communicated to the applicant.

Power to supersede Board.

100. (1) If the State Government is of opinion that the Board is unable to perform, or has persistently made default in the performance of, the duty imposed on it by or under this Act or has exceeded or abused its powers, or has wilfully and without sufficient cause failed to comply with any direction issued by the Central Government under section 96 or the State Government under section 97, or if the State Government is satisfied on consideration of any report submitted after annual inspection, that the Board's continuance is likely to be injurious to the interests of the wakfs in the State, the State Government may, by notification in the Official Gazette, supersede the Board for such period as may be specified in the notification:

Provided that before issuing a notification under this sub-section, the State Government shall give a reasonable time to the Board to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the Board.

(2) Upon the publication of a notification under sub-section (1) superseding the Board,—

(a) all the members of the Board shall, as from the date of supersession, vacate their offices as such members;

(b) all the powers and duties which may, by or under the provisions of this Act, be exercised or performed by or on behalf of the Board shall, during the period of supersession, be exercised and performed by such person or persons as the State Government may direct; and

(c) all property vested in the Board shall, during the period of supersession, vest in the State Government.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the State Government may—

(a) extend the period of supersession for such further period as it may consider necessary; or

(b) reconstitute the Board in the manner provided in section 14.

Protection of action taken in good faith

101. No suit or other legal proceeding shall lie against the Board or Chief Executive Officer or Survey Commissioner or any other person duly appointed under this Act in respect of anything which is in good faith done or intended to be done under this Act.

Survey Commissioner, Members and officers of the Board deemed to be public servants.

102. (1) The Survey Commissioner, members of the Board, every officer every auditor of the Board and every other person duly appointed to discharge any duties imposed on him by this Act or any rule or order made thereunder, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

(2) Every mutawalli of a wakf, every member of managing committee, whether constituted by the Board or under any deed of wakf,

every Executive Officer and every person holding any office in a wakf shall also be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

Special provision for reorganisation of certain Boards.

103. (*1*) Where on account of the reorganisation of States under any law providing reorganisation of States, the whole or any part of a State in respect of which a Board was, immediately before the day of such reorganisation, functioning has been transferred on that day to another State and by reason of such transfer, it appears to the Government of a State in any part of which the Board is functioning that the Board should be dissolved or that it should be reconstituted as an Intra-State Board for the whole or any part of that State, the State Government may frame a scheme for such dissolution or such reconstitution, including proposals regarding the transfer of the assets, rights and liabilities of the Board to any other Board or State Government and the transfer or re-employment of employees of the Board and forward the scheme to the Central Government.

(*2*) On receipt of a scheme forwarded to it under sub-section (*1*), the Central Government may, after consulting the State Governments concerned, approve the scheme with or without modifications and give effect to the scheme so approved by making such order as it thinks fit.

(*3*) An order under sub-section (*2*) may provide for all or any of the following matters, namely:—

(*a*) the dissolution of the Board;

(*b*) the reconstitution in any manner whatsoever of the Board including the establishment, where necessary, of a new Board.

(*c*) the area in respect of which the reconstituted Board or new Board shall function and operate;

(*d*) the transfer, in whole or in part, of the assets, rights and liabilities of the Board (including the rights and liabilities under any contract made by it) to any other Board or State Government and the terms and conditions of such transfer;

(*e*) the substitution of any such transferee for the Board, or the addition of any such transferee, as a party to any legal proceeding to which the Board is a party; and the transfer of any proceeding pending before the Board to any such transferee;

(*f*) the transfer or re-employment of any employee of the Board to or by, any such transferee and subject to the provisions of law providing for the reorganisation of the concerned State, the terms and conditions of service applicable to such employees after such transfer or re-employment; and

(*g*) such incidental, consequential and supplemental matters as may be necessary to give effect to the approved scheme.

(*4*) Where an order is made under this section transferring the assets, rights and liabilities of any Board, then, by virtue of that order, such assets, rights and liabilities of the Board shall vest in, and be the assets, rights and liabilities of, the transferee.

(*5*) Every order made under this section shall be published in the Official Gazette.

(6) Every order made under this section shall be laid before each House of Parliament, as soon as may be, after it is made.

Special provision for establishment of Board for part of a State.

104. (1) Where on account of the territorial changes brought about by any law providing for the reorganisation of any State, this Act is as from the date on which that law comes into force, applicable only to any part or parts of a State but has not been brought into force in the remaining part thereof, then notwithstanding anything contained in this Act, it shall be lawful for the Government of the State to establish one or more Boards for such part or parts in which this Act is in force and in such a case any reference in this Act to the word "State" in relation of a Board shall be construed as a reference to that part of the State for which the Board is established.

(2) Where any such Board has been established and it appears to the Government of the State that a Board should be established for the whole of the State, the State Government may, by order notified in the Official Gazette dissolve the Board established for the part of the State or reconstitute and reorganise such Board or establish a new Board for the whole of the State and thereupon, the assets, rights and liabilities of the Board for the part of the State shall vest in and be the assets, rights and liabilities of the reconstituted Board or the new Board, as the case may be.

Application of Act to properties given or donated by persons not professing Islam for support of certain wakf.

105. Notwithstanding anything contained in this Act where any movable or immovable property has been given or donated by any person not professing Islam for the support of a wakf being—

(a) a mosque, idgah, imambara, dargah, khangah or a maqbara;

(b) a Muslim graveyard;

(c) a choultry or a musafarkhana,

then such property shall be deemed to be comprised in that wakf and be dealt in the same manner as the wakf in which it is so comprised.

Power of Board and Chief Executive Officer to require copies of documents, etc. to be furnished.

106. Notwithstanding anything contained in any law for the time being in force, it shall be lawful for the Board or the Chief Executive Officer to require any person having the custody of any record, register, report or other document relating to a wakf or any immovable property, which is wakf property, to furnish subject to the payment of necessary costs, copies of, or extracts from, any such record, register, report or document and every person to whom such a requisition is made, shall furnish, as soon as may be practicable, to the Board or Chief Executive Officer copies or extracts from the required record, register, report or other document.

Power of Central Government to constitute common Boards.

107. (1) Where the Central Government is satisfied that by reason of—

(i) the smallness of the Muslim population in two or more States,

(ii) the slender resources of the Wakfs in such States, and

(iii) the disproportion between the number and income of the wakfs and the Muslim population in such States,

it is expedient in the interests of the wakfs in the States and the Muslim population of such States, to have, instead of separate Boards for each of such States, a common Board, it may, after consultation with the Government of each of the concerned States, establish, by notification in the Official Gazette, a common Board for such States as it may deem fit, and may, by the same or any subsequent notification, specify the place at which the principal office of such common Board shall be located.

(2) Every common Board established under sub-section (1) shall, as far as practicable, consist of the persons specified in sub-section (1) or, as the case may be, sub-section (7) of section 14.

(3) Whenever any common Board is established under sub-section (1),—

(a) all powers vested in the State Government under any deed of wakf or any provision of law for the time being in force relating to wakfs, shall stand transferred to, and vested in, the Central Government and, thereupon, references in such deed of wakf or law to the State Governments shall be construed as references to the Central Government:

Provided that while establishing a common Board for two or more States, the Central Government shall ensure that at least one representative of each of the concerned States is included as a member of the Board;

(b) references in this Act to a State shall be construed as references to each of the States for which the common Board has been established;

(c) the Central Government may, without prejudice to any rule applicable to a Board in a State, make, by notification in the Official Gazette, rules regulating the conduct of business by, and affairs of the common Board.

(4) The common Board shall be a body corporate, with objects not confined to one State, having perpetual succession and a common seal with power to acquire and hold property and to transfer any such property, subject to such conditions and restrictions as may be specified by the Central Government, and shall by the said name sue or be sued.

36 of 1963

108. Notwithstanding anything contained in the Limitation Act, 1963, the period of limitation for any suit for possession of immovable property comprised in any wakf or possession of any interest in such property shall be a period of thirty years and such period shall begin to run when the possession of the defendant becomes adverse to the plaintiff.

Period of limitation for recovery of wakf properties.

109. The provisions of this Act shall apply, and shall be deemed always to have applied, in relation to any evacuee property within the meaning of clause (f) of section 2 of the Administration of Evacuee Property Act, 1950 which immediately before it became such evacuee property within the said meaning was property comprised in any wakf and, in particular any entrustment (whether by transfer of any documents or in any other manner and whether generally or for specified purpose) of any such property to a Board made before the commencement of this

31 of 1950.

Special provision as to evacuee wakf properties.

Act in pursuance of the instructions of the Custodian under the Administration of Evacuee Property Act, 1950 shall have, and shall be deemed always to have had, notwithstanding anything contained in any other provision of this Act, effect as if such entrustment had operated to—

(*a*) vest such property in such Board in the same manner and with the same effect as in a trustee of such property for the purposes of sub-section (*1*) of section 11 of the Administration of Evacuee Property Act, 1950 with effect from the date of such entrustment, and 31 of 1950.

(*b*) authorise such Board to assume direct management of the wakf concerned for so long as it might deem necessary.

Power to make rules.

110. (*1*) The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act, other than those of Chapter III.

(*2*) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(*i*) other particulars which the Report of the Survey Commissioner may contain, under clause (*f*) of sub-section (*3*) of section (*4*);

(*ii*) any other matter under clause (*f*) of sub-section (*4*) of section 4;

(*iii*) the particulars which a list of Wakfs published under sub-section (*2*) of section 5, may contain;

(*iv*) the manner of election of members of the Board by means of a single transferable vote, under sub-section (*2*) of section 14;

(*v*) the terms and conditions of service of the Chief Executive Officer under sub-section (*2*) of section 23;

(*vi*) the conditions and restrictions subject to which the Chief Executive Officer or any other officer may inspect any public office, records or registers under section 29;

(*vii*) the conditions subject to which an Executive Officer and supporting staff may be appointed under sub-section (*1*) of section 38;

(*viii*) the manner in which an inquiry may be held by the Chief Executive Officer under sub-section (*1*) of section 39;

(*ix*) the form in which, and the time within which a separate budget for Wakfs under the direct management of the Board shall be prepared under sub-section (*1*) of section 45;

(*x*) the interval at which accounts of Wakfs may be audited in pursuance of the provisions of sub-section (*1*) of section 47;

(*xi*) the time within which, the sale of any property is to be informed under the first proviso to sub-section (*2*) of section 51 and the manner in which the approval given under sub-section (*3*) of that section shall be published;

(*xii*) the guidance subject to which the Collector shall recover the property transferred in contravention of the provisions of this Act, under section 52;

(*xiii*) the manner of service of notice issued under sub-section (*1*) of section 54 and the manner in which any inquiry is to be made under sub-section (*3*) of that section;

(*xiv*) the manner in which any inquiry may be held under section 64 or section 71;

(*xv*) the other matters which may be specified in the report submitted under sub-section (*3*) of section 65;

(*xvi*) the manner of publication of order made under sub-section (*2*) of section 67;

(*xvii*) the manner in which consultation may be made with mutawalli under sub-section (*1*) of section 69;

(*xviii*) the manner of publication of order made under sub-section (*3*) of section 69;

(*xix*) the rate at which contribution is to be made by a mutawalli under section 72;

(*xx*) the payment of moneys into the Wakf Fund, the investment, the custody and disbursement of such moneys under section 77;

(*xxi*) the form in which, and the time within which, the budget of the Board may be prepared and submitted under section 78;

(*xxii*) the time within which application is to be made to the Tribunal under sub-section (*2*) of section 83;

(*xxiii*) the procedure which the tribunal shall follow under sub-section (*6*) of section 83;

(*xxiv*) the form in which the annual report is to be submitted and the matters which such report shall contain under section 98; and

(*xxv*) any other matter which is required to be, or may be, prescribed.

Powers to make regulations by the Board.

111. (*1*) The Board may, with the previous sanction of the State Government, make regulations not inconsistent with this Act or the rules made thereunder, for carrying out its functions under this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing powers, such regulations may provide for all or any of the following matters, namely:—

(*a*) the time and places of the meetings of the Board under sub-section (*1*) of section 17;

(*b*) the procedure and conduct of business at the meetings of the Board;

(*c*) the constitution and functions of the committees and the Board and the procedure for transaction of business at the meetings of such committees;

(*d*) the allowances or fees to be paid to the Chairperson or members of the Board or members of committees;

(*e*) the terms and conditions of service of the officers and other employees of the Board under sub-section (*2*) of section 24;

(*f*) the form of application for registration of Wakfs further particulars to be contained therein and the manner and place of registration of Wakfs under sub-section (*3*) of section 36;

(*g*) further particulars to be contained in the register of Wakfs under section 37;

(*h*) the form in which, and the time within which, the budgets of Wakfs may be prepared and submitted by the Mutawalli and approved by the Board under sub-section (*1*) of section 44;

(*i*) the books of accounts and other books to be maintained by the Board under section 79;

(*j*) fees payable for inspection of proceedings and records of the Board or for issue of copies of the same;

(*k*) persons by whom any order or decision of the Board may be authenticated; and

(*l*) any other matters which has to be, or may be provided by regulations.

(*3*) All regulations made under this section shall be published in the Official Gazette and shall have effect from the date of such publication.

Laying of rules and regulations before State Legislature.

112. Every rule made under section 110 and every regulation made under section 111 shall be laid, as soon as may be after it is made, before the State Legislature.

Repeal and Savings

29 of 1954.
69 of 1984

113. (*1*) The Wakf Act, 1954 and the Wakf (Amendment) Act, 1984 are hereby repealed.

(*2*) Notwithstanding such repeal anything done or any action taken under the said Acts shall be deemed to have been done or taken under the corresponding provisions of this Act.

(*3*) If, immediately before the commencement of this Act, in any State, there is in force in that State, any law which corresponds to this Act that corresponding law shall stand repealed:

Provided that such repeal shall not affect the previous operation of that corresponding law, and subject thereto, anything done or any action taken in the exercise of any power conferred by or under the corresponding law shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this Act was in force on the day on which such things were done or action was taken.

Power to remove difficulties.

114. (*1*) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Provided that no such order shall be made after the expiry of the period of two years from the commencement of this Act.

(*2*) However, order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

STATEMENT OF OBJECTS AND REASONS

The actual working of the Wakf Act, 1954 had brought out many deficiencies in it as also in the set up of the Wakf Boards, especially, their powers of superintendence and control over the Management of individual wakfs. To clarify some of these matters—the Act had to be amended three times—in 1959, in 1964 and in 1969—within a period of 15 years.

2. Comprehensive amendments to the Wakf Act, were, made by the Wakf (Amendment) Act, 1984 which were based largely on the recommendations of the Wakf Inquiry Committee set up in December, 1970 to enquire into administration of wakfs at all levels and in response to a demand made in Parliament by the Members during a discussion on the Wakf (Amendment) Bill, 1969.

3. Only two provisions of 1984 Act could, however, be enforced because of strong opposition to its various provisions from the Muslim Community. The two provisions related to:—

(*i*) increasing the period of limitation for filling suits in respect of wakf properties in adverse possession from 12 years to 30 years; and

(*ii*) application of the provisions of Wakf Act, 1954, to the Evacuee properties.

4. The main criticism related to provisions concerning the powers of the Wakf Commissioner. It was stated that the Wakf Commissioner has been given overriding powers and the Wakf Board has been made subordinate to him. The other criticisms were that the Amendment Act, 1984 is a gross interference by the State and the Central Government in the day to day management and administration of the wakfs by the Trustees and Mutawallis of wakfs.

5. After a careful consideration of the objections to the various provisions of the 1984 Act, and after holding wide ranging discussions with the leaders of the Muslim Community, it has been decided to bring in a new comprehensive Bill on wakf matters incorporating the features of 1954 Act and such provisions of the 1984 Act in respect of which there was a near consensus.

6. Now, the new Wakf Law will have *inter alia* the following features:—

(*a*) Wakf Boards for the States and for the Union territory of Delhi shall have not less than 7 and not more than 13 members of which the majority will comprise such persons as are elected from amongst Muslim Members of Parliament, Muslim Members of State Legislatures, Muslim Members of the Bar Council in a State and Mutawallis of wakfs having an annual income of Rs. 1 lakh or more. The nominated members will be from Muslim organisations of State eminence, recognised scholars

in Muslim theology and a representative of the State Government not below the rank of Deputy Secretary. In a State where there are Shia wakfs but no separate Shia Wakf Board, at least one of the Members shall be a Shia Muslim. A smaller Wakf Board is envisaged for Union territories other than Delhi.

(*b*) The other important feature is about distribution of powers between the Wakf Board and the Wakf Commission which would now be redesignated as the Chief Executive Officer and would be subordinate to the Wakf Board.

(*c*) Provisions are also being made for appointment of the Executive Officer in respect of wakfs whose performance is not satisfactory and whose annual income is Rs. 5 lakhs or more.

(*d*) To strengthen the finances of the Wakf Board, one of the measures being contemplated is to raise the rate of the contribution by a Wakf to the Wakf Board from 6 per cent. of its annual income to 7 per cent.

(*e*) It is also intended to put certain restrictions on the powers of Mutawallis in the interest of better management of wakf properties.

(*f*) An important provision in the proposed Bill relates to setting up of Wakf Tribunals to consider questions and disputes pertaining to wakfs.

(*g*) There are instances of misuse of wakf properties either with or without the connivance of the Mutawallis. It is now proposed to incorporate in the Bill a provision so that the alienation of wakf properties will not be easy

(*h*) At present, the Wakf Act, 1954 is not applicable to Uttar Pradesh, West Bengal, parts of Gujarat, parts of Maharashtra and some of the North-Eastern States. With the enforcement of this legislation, there will be uniformity in respect of wakf administration throughout the country except in Jammu and Kashmir State.

The present Bill seeks to achieve the above objectives.

SITA RAM KESRI.

Notes on Clauses

Clause 2.—This clause provides for application the provisions of the Bill to all wakfs whether created before or after the commencement of this legislation, with the exception that the Durgah Khawaja Saheb Ajmer shall be governed by the provisions of the Durgah Khawaja Saheb Act, 1955 (36 of 1955).

Clause 3.—This clause defines certain terms used in this Bill.

Clause 4.—This clause seeks to empower the State Goverment to appoint Survey Commissioners for carrying out survey of wakfs in the State.

Sub-clause (6) of this clause provides for a second or subsequent survey of Wakfs at an interval of 20 years.

Clause 5.—This clause provides for the publication of a list of wakfs in a State by the Board.

Clause 6.—This clause provides that any question or dispute relating to a property which has been included in the list of wakfs as wakf property should be filed in the Tribunal within one year from the date of publication of the said list. In pursuance of the recommendation of the Wakf Inquiry Committee, it is being provided that such question or dispute arising after the commencement of this Act, shall be dealt with by the Tribunal established under this Act.

Clause 7.—This clause seeks to empower the Tribunal to entertain, applications relating to question or dispute arising out of the list of wakf published under clause 5 (2). It is also being clarified that the Tribunal shall not entertain any application relating to a matter dealt with by a Civil Court nor shall it reopen any matter which has been decided by a Civil Court.

Clause 8.—This clause provides that the cost of survey of wakfs including the cost of publication of list shall be borne by the Mutawallis of the wakfs concerned. In case of the failure by the Mutawalli, the amount may be recovered as an arrear of land revenue.

Clause 9.—This clause provides for the establishment of the Central Wakf Council by the Central Government to advise it on wakf matters.

Clause 10.—This clause provides for contributions to be made by the Boards to the Council at the rate of one per cent of the net annual income of Wakfs in that State.

Clause 11.—This clause provides that accounts of the Council shall be maintained in prescribed manner and shall be required to be audited.

Clause 12.—This clause provides for empowering the Central Government to frame rules for prescribing the procedure to be followed by the Central Wakf Council.

Clause 13.—This clause provides for the establishment of Wakf Boards by the State Government and the Union territory Administrations. The provision has also been made for the establishment of separate Boards for Shias and Sunnis if the number of Shia Wakfs is more than fifteen per cent or the income from the Shia Wakfs is more than fifteen per cent. of the total income of the wakfs in that State.

Clause 14.—This clause deals with the composition of the Wakf Boards which has been worked out after wide ranging consultations wherein the general agreement was that the nominated Members should not exceed the elected Members and Mutawallis should also be given representation on the Board. Separate composition has been provided for the Wakf Boards of the Union territories other than Delhi.

Clause 15. This clause provides that the term of office of Chairperson and Members of the Board shall be five years.

Clause 16.—This Clause deals with disqualifications of members for being appointed or continue on the Board.

Clause 17.—This clause lays down the procedure regarding the meetings of the Board.

Clause 18.—This clause provides for the constitution, functions, duties and the term of office of the committees of the Board.

Clauses 19, 20, 21 and 22.—These clauses respectively provide for the resignation and removal of the Chairperson and members of the Board, filling of vacancies arisen out of such resignation, removal or death of the members and that the act or proceedings of the Board not to invalidate by reason of existence of any vacancies amongst its members.

Clause 23.—This clause provides for the appointment of the Chief Executive Officer by the State Government who shall be Muslim and also be ex-officio Secretary of the Board. The terms and conditions of his service shall be such as may be prescribed under rules.

This is in accordance with the recommendations of the Wakf Enquiry Committee with the modification that the appointment will be in consultation with the Board.

Clause 24.—This clause provides for appointment of officers and employees of the Board. The terms and conditions of their service shall be such as may be provided by regulations by the Board.

Clause 25.—This clause provides for duties and other powers of the Chief Executive Officer which are in line with the recommendations of the Wakf Inquiry Committee except with the modification that the Chief Executive Officer shall exercise these powers under the directions of the Board.

Clause 26.—This clause provides that where the Chief Executive Officer considers that an order or resolution of the Board is in excess of or in abuse of the powers of the Board or the same has not been passed in accordance with the law, or if implemented, may cause financial loss to the Board, or to the Wakf, or may lead to a right or breach of peace,

or cause damage to human life, health and safety, he may before implementing such order or resolution refer it to the Board for reconsideration. If there is no unanimity in the Board at the stage of reconsideration of such order or resolution the Chief Executive Officer shall forward the same to the State Government with his objections thereon for its direction and decision of the State Government thereon shall be final.

This is in accordance with the recommendation with the Wakf Inquiry Committee, as modified in the light of the recommendations of the Committee appointed for considering the Wakf (Amendment) Act, 1984.

Clause 27.—This clause empowers the Board to delegate to the Chairperson, Member, Secretary or any other Officer such of its powers as it thinks fit.

Clause 28.—This clause empowers the Chief Executive Officer to delegate all or any of its powers to Commissioner of the Division or the Collector of the District.

Clause 29.—This clause provides that the Chief Executive Officer or any officer authorised by him shall inspect records, registers or documents relating to any wakf property.

Clause 30.—This clause provides that Board's records, proceedings, etc., may be inspected any person interested in them after paying the prescribed fee.

Clause 31.—This clause provides that no person shall be disqualified from becoming a Member of Parliament only because he is or he has been Member or Chairperson of the Board.

Clause 32.—This clause deals with the functions of the Board. Functhave been decided after wide ranging consultations and also taking into account recommendations of the Committee on Wakf (Amendment) Act, 1984.

Clause 33.—This clause empowers the Chief Executive Officer or any person authorised by him inspect all movable and immovable wakf properties and papers connected therewith so as to see whether the mutawalli has caused any loss or damage to the wakf properties through negligence or otherwise. In case it is found that mutawalli has misappropriated any money of the wakf property, an order shall be passed for recovery of the amount involved from the personal funds of the mutawalli. If the property has been given over, the same would be restored to the wakf mutawalli or any officer or other employee of the Wakf will be given opportunity to explain their case.

A person aggrieved by the action of the Chief Executive Officer may move the Tribunal who's orders will be final. This is in accordance with the recommendations of the Wakf Inquiry Committee.

Clause 34.—This clause explains the manner of recovery of the wakf property from the Mutawalli through the office of the Collector.

Clause 35.—It has been provided that a Tribunal may conditionally attach a wakf property if an application to this effect has been made by

the Chief Executive Officer, that the Mutawalli is about to dispose of the property or to remove it from the jurisdiction of the Chief Executive Officer.

Clause 36.—This clause provides for the registration of a wakf and the manner in which an application for registration of wakf is to be made and about the registration of such wakf by the Board, after making relevant enquiries.

Clause 37.—This clause provides for maintenance of a register of wakfs by the Wakf Board and the particulars that such a register should contain.

Clause 38.—This clause provides for the appointment of the Executive Officer on whole-time, part-time or honorary basis by the Board for such wakfs whose gross annual income is rupees 5 lakhs or more. The Executive Officer shall be a person professing Islam.

The sub-clause (3) provides that the Executive Officer shall not interfere with the religious acts, duties and customs relating to the wakfs sanctioned by Muslim law.

Sub-clauses (4) and (5) provide that the salaries and allowances of the Executive Officer and his staff shall be paid by the Board and will be recovered from the enhanced income that the wakf may generate subsequently.

This clause is based on the recommendations of the Wakf Inquiry Committee except that:—

(i) The Board may appoint Executive Officer only when the gross annual income of the wakf is rupees 5 lakhs or more.

(ii) Payment of salaries of the Executive Officers and his staff is initially to be made by the Wakf Board and the Executive Officer and his staff is to be recovered from the enhanced income generated subsequently.

Clause 39.—This clause empowers the Chief Executive Officer,—

(i) to pass an order for the utilisation of property of funds of a Wakf which has ceased to be a Wakf, after making an enquiry in the manner described;

(ii) to make an application to the Tribunal for recovery of any building or place which was being used for religious purposes before the commencement of this Act; and

(iii) to pass an order for the recovery of wakf property which is under unlawful possession of any person.

Clause 40.—This clause provides that a decision of the Tribunal as to whether a particular property is a wakf property or not or whether it is a shia wakfs or sunni wakfs shall be final.

Sub-clauses (3) and (4) provide that the Board may, if it believes that a particular property is registered under the Indian Trust Act, 1882 or the Societies Registration Act, 1860 is in fact a wakf property issue a

notice to the Trust or Society asking it to register this property as wakf property after considering the reply of the trust or society to such notice.

Clause 41.—This clause empowers the Board to amend the register of wakfs and to give direction to the mutawallis to apply for registration or to furnish any information.

Clause 42.—Any change in the management of the Wakf Board is to be notified to the Board.

Clause 43.—This clause provides that if a property, etc, has been registered as a wakf before the commencement of this Act, no fresh registration will be necessary.

Clause 44.—This clause provides for approval by the Board of the budget of a wakf whose annual income exceeds rupees fifty thousand.

Clause 45.—This clause provides for the preparation of the budget and audit of accounts of wakfs under the direct management of the Board.

Clause 46.—Enjoins the mutawalli to keep regular accounts and submit annual accounts of previous financial years to the Board.

Clause 47.—This clause provides the manner in which the account of wakf submitted to the Board shall be audited.

Clause 48.—Sub-clause (1) provides that the Board may after examining the reports of the auditors and after going through the explanation of the persons named in the reports, pass orders for recovery of the amount referred to in the auditor's reports.

Sub-clause (2) and (3) provide that the mutawalli may move the Tribunal against the order of the Board provided that the amount in question has been deposited with the Tribunal.

Sub-clause (5) provides that the amount due will be recovered as an arrear of land revenue.

Clause 49.—This clause provides that the amount due in terms of the audited report is to be deposited by the person concerned within sixty days otherwise the same will be recovered as an arrear of land revenue on a certificate issued by the Board.

Clause 50.—This clause lays down the duties of the mutawalli.

Clause 51.—The Wakf Enquiry Committee had recommended that a separate and self-contained provision should be incorporated in the Act in respect of sale, or exchange, mortgage of any immovable property belonging to wakf. This recommendation was made with a view that the mutawalli should not be able to transfer the wakf properties by way of gift, sale or mortgage without the prior approval of the Board.

This clause therefore provides that the alienation of wakf properties by way of gift, sale, exchange or hypothecation without the sanction of the Board shall be void.

Clause 52.—This clause lays down the procedure for the recovery of the wakf property transferred without the sanction of the Board with

the assistance of the Collector of the district in which the property is situate. It also provides for an appeal to the Tribunal against the order of the Collector.

Clause 53.—This clause provides that a wakf eannot acquire any immovable property from its fund without a sanction of the Board. The Board is to issue the sanction after considering objections and suggestions received in respect of the proposed transaction. The clause is based on the recommendation of the Wakf Inquiry Committee.

Clause 54.—This clause empowers the Chief Executive Officer to remove encroachments upon the wakf properties, been inserted and on the basis of the recommendation of the Wakf Inquiry Committee.

Clause 55.—This clause lays down the procedure for the removal of encroachment upon the wakf properties by the Chief Executive Officer through the Sub-Divisional Magistrate.

Clause 56.—This clause provides that no wakf property shall be leased for more than three years and a lease of wakf property for a period for more than one year and less than three years shall be made with the previous sanction of the Board. This has been provided on the basis of the recommendation of the Wakf Inquiry Committee.

Clause 57.—This clause provides that mutawalli can claim money from the income of the wakf for any expenditure incurred by him in connection with the furnishing of any information or documents to the Board.

Clause 58.—This clause provides that any dues from the wakf to the local authorities or to the Government paid may be by the Board from wakf fund and can be recovered as an arrear of land revenue on a certificate from the Board.

Clause 59.—The Board has been empowered to direct creation and maintenance of the reserve fund from the income of the wakf for the purposes of payment of dues to the Government and for repair and preservation of wakf properties.

Clause 60.—This clause empowers the Board to extend the time limit for completion of any act by the mutawalli under this Act.

Clause 61.—Sub-clause (1) of this clause lists out the duties which a mutawalli is required to do and provides that failure of the mutawalli to do any of the duties, shall be punishable with fine extending to rupees eight thousand.

Sub-clause (2) provides for a fine of rupees fifteen thousand and imprisonment for six months, if mutawalli fails to apply for registration of the wakfs with the intention of concealing its existence.

Clause 62.—This clause provides that the mutawalli shall not use the wakf money for defending himself in the matter of his removal from office or any disciplinary action against him.

Clause 63.—This clause empowers the Board to appoint a mutawalli where a vacancy has been caused and where the wakf deed does not specify the person or where there is a dispute in this regard.

Clause 64.—This clause provides that the Board may remove a mutawalli who has been convicted or has been defaulting in the performance of his duties or has exceeded or abused his powers.

Clause 65.—This clause provides that if no suitable person is available, the Board may assume management of the wakf for a period not exceeding five years. The State Governments may call for records of the Board regarding assumption of direct management of the wakf property and pass such orders as it may think fit.

Clause 66.—This clause provides that the power to appoint and remove the mutawallis can be exercised by the State Government if such appointment was to be made by any authority other than the Board.

Clause 67.—This clause provides that any committee which has been appointed by the wakf for the supervision or management of any wakf shall be subjected to the direction, control and supervision of the Board. The Board may supersede such committee or may modify any scheme for the management of the wakf by such committee if such scheme is inconsistent with the provisions of the Act.

The Board may, for reasons to be recorded in writing, supersede such committee. The order of supersession by the Board shall be final subject to any appeal preferred against it by any person aggrieved by such order to the Tribunal. The Tribunal shall have no power to suspend operation of the order of the Board pending such appeal.

Clause 68.—Under this clause a mutawalli or a committee removed from the management of any wakf shall hand over the charge and deliver possession of the records, accounts and properties of the wakf (including cash) to their successor. Whesre the removed mutawalli of the committee fails to hand over such charge or deliver such possession, he or it shall be punishable with imprisonment for a term of 6 months or with five upto eight thousand rupees or with both.

Clause 69.—This clause empowers the Board to frame a scheme for the proper administration of the Wakf, of its own motion or on the application received from not less than 5 persons interested in such Wakf. It also provides for publication of the order of the Board in the prescribed manner and for an appeal to the Tribunal by the person aggrieved by the order of the Board.

Clause 70.—This clause provides that any person may make an application to the Board for an enquiry into the administration of a wakf.

Clause 71.—Under this clause the Board has been empowered to initiate an enquiry into the administration of a wakf in the prescribed manner.

Clause 72.—This clause provides for contribution of 7 per cent of the net annual income to be made by a wakf having an annual income of rupees five thousand or more to the Board and explains in detail what would constitute the net annual income.

Clause 73.—This clause provides that the Board may give directions to a bank having an account of a wakf to make remittance of 7 per cent. contribution to the board. Provision has also been made for penal action against the bank or other person if they fail to comply with the order of the Board.

This is in accordance with the recommendation of the Wakf Inquiry Committee.

Clause 74.—This clause provides that an authority empowered to disburse any perpetual annuity to a wakf may deduct the amount payable to the board as annual contribution of the wakf and remit the same to the Chief Executive Officer.

Clause 75.—This clause empowers the Board to borrow any sum of money with the previous sanction of the State Government.

Clause 76.—This clause prohibits a mutawalli to borrow or lend money without the previous sanction of the Board. Provision has also been made for recovery by Chief Executive Officer of any amount let or borrowed by mutawalli in contravention of this provision.

Clause 77.—This clause details what constitutes a wakf fund and the manner of its utilisation.

Clause 78.—This clause provides that the Board shall submit its annual budget to the State Government.

Clause 79.—This clause provides that the Board shall maintain proper account books of account.

Clause 80.—This clause provides for auditing the accounts of the Board by an auditor appointed by the State Government. The cost of audit is to be paid from the wakf fund.

Clause 81.—The State Government has been empowered to call for the explanation about a matter referred to in auditor's report.

Clause 82.—This clause provides that any sum due from a person in terms of auditors' report shall be paid by him within sixty days failing which the same shall be recovered as an arrear of land revenue.

Clause 83.—This clause provides for appointment, powers, jurisdiction and authority of a Tribunal. Tribunal's decisions are to be executed by the civil courts. The Tribunal would be manned by a sitting Judge of the level of District and Sessions Judge.

Clause 84.—This clause provides for expeditious hearing and decision by the Tribunal.

Clause 85.—This clause bars the jurisdiction of civil court in respect of matters to be determined by the Tribunal.

Clause 86.—This clause provides that a Tribunal may appoint a receiver in respect of the property about which legal proceedings have been instituted either by or on behalf of a Board or by a Mutawalli. This is based on the recommendations of the Wakf Inquiry Committee.

Clause 87.—This clause prohibits the mutawalli of an unregistered wakf from filing any suit, appeal or legal proceeding for the enforcement of any right of that wakf,

Clause 88.—This clause bars challange to the validity of any order or decision of the Central Government or the State Government under this Act in any civil court.

Clause 89.—This clause provides that no suit shall lie against the Board until expiry of a two months period from the date a notice to this effect has been given to the Board.

Clause 90.—Sub-clause (1) of this clause provides that cost of issuing a notice to the Board by the Tribunal be met by the party which institutes a suit or proceedings relating to the title or possession of a wakf property.

Sub-clauses (2), (3) and (4) provide that a notice to the Board shall be given if a wakf property is put on sale in execution of any decree.

Clause 91.—This clause empowers the Board to appear and plead in any proceeding under the Land Acquisition Act, 1894 or any other law for the time being in force where such proceeding relates to any wakf property.

Clause 92.—This clause empowers the Board to get itself impleaded as a party in respect of a suit or proceeding concerning a wakf property to which it has not been made a party in the usual course.

Clause 93.—This clause bars compromising any suit relating to title of wakf property by or against a mutawalli without the sanction of the Board.

Clause 94.—This clause entitles the Board to apply to the Tribunal for an order directing the mutawalli to pay any sum that may be due to the Board. Application can also be made by any person interested in the wakf for ensuring that the mutawalli fulfils the obligation imposed on him.

Clause 95.—This clause empowers the appellate authority to entertain the appeal even after the time limit prescribed for filing it has expired.

Clause 96.—This clause empowers the Central Government to lay down general principles and policy of wakf administration, the functions of Central Wakf Council and the State Wakf Boards and review administration of the secular activities.

Clause 97.—This clause empowers the State Government to give general or special directions to the State Wakf Board and the Boards are required to comply with them.

Clause 98.—This clause makes it obligatory on the State Government to prepare an annual report in respect of Board and the administration of wakfs in that State and to lay the same before State Legislature.

Clause 99.—This clause empowers the State Government to revise a decision of the Board, on its own motion or on an application made to it.

Clause 100.—This clause empowers the State Government to supersede a Wakf Board if in the opinion of that Government the Board is unable to perform or has defaulted in the performance of its duties or fails to comply with the direction of that Government.

Clause 101.—This clause protects the Board and its officers against legal proceedings for any act done by them in good faith.

Clause 102.—This clause provides that officers and members of the Board, auditors engaged, mutawalli, etc., will be public servants in terms of section 21 of the Indian Penal Code.

Clause 103.—This clause provides that if on reorganisation of a State the State Government feels that the part of the Board falling within its jurisdiction shall be dissolved or reconstituted as an Inter-State Board, a scheme may be framed for dissolution or reconstitution including proposals for transfer of assets, rights, liabilities, employment, re-employment of employees, etc.

The scheme is to be forwarded to the Central Government which may make modifications if necessary, after consulting the State Government.

These provisions are based on the recommendations of Wakf Inquiry Committee.

Clause 104.—This clause provides that the State Government can establish one or more boards in respect of that part of the State to which this Act would apply. It also provides that if a Board for a part of a State is already in existence, the State Government can dissolve that Board and establish a Board for the whole of the State.

This has been necessitated for the reason that the Wakf Act, 1954, was applicable only to parts of Maharashtra and parts of Gujarat. Wakf Boards having jurisdiction in only these parts are in existence in these States.

Clause 105.—This clause provides that any property donated by a non-Muslim for support of a wakf will form part of that wakf.

Clause 106.—This clause empowers the Board and the Chief Executive Officer to require any person to furnish copies of the records, documents relating to a wakf property subject to payment of necessary costs.

Clause 107.—This clause empowers the Central Government to constitute common Board for more than one State, if the number of wakfs or the muslim population, in each of the States is very small.

The Central Government is also required to notify the principal office of such common Board.

Clause 108—This clause provides that period of limitation for any suit for possession of the immovable wakf properties shall now be extended to thrity years instead of twelve years under the Limitation Act, 1963.

This clause is based on the recommendation of the Wakf Inquiry Committee.

Clause 109.—This clause gives jurisdiction of the Board over the Evacuee Property which was in the nature of a wakf.

Clause 110.—This clause empowers the State Government to make rules for carrying out the purpose of this Act.

Clause 111—This clause empowers the State Wakf Board to frame regulations for carrying out the day to day functions of the Board,

Clause 112.—This clause provides for laying of rules and regulations made under this Act before the State Legislature.

Clause 113.—This clause provides for the repeal of the Wakf Act, 1954 and the Wakf (Amendment) Act, 1984.

Clause 114.—This clause provides that the Central Government can make provisions for removal of difficulties in carrying out the provisions of this law within a period of two years from the commencement of this Act.

FINANCIAL MEMORANDUM

Clause 83 of the Wakf Bill, 1993 seeks to provide for the establishment of Tribunals for dealing with wakf matters. A provision has, therefore, been made in the Bill for the State Governments or the Central Government, as the case may be, for constituting as many tribunals as may be necessary for the purposes of the Act and each tribunal shall have jurisdiction over such area in the State as may be specified. A tribunal shall be deemed to be a Civil Court and shall have the same powers as are vested in such a Court under the Code of Civil Procedure, 1908. Each Tribunal shall consist of one person who shall be a Judicial Officer of the State Government not below the rank of a District and Sessions Judge or a Civil Judge Class I and who may be appointed as such either by name or by virtue of Offices. The Tribunal shall follow the procedure as may be prescribed.

2. The setting up of Tribunal will involve expenditure from the Consolidated Fund of the State for a State Tribunal and from the Consolidated Fund of India for Tribunals in the Union territories. The State Government in respect of UTs is the Central Government. There are no significant wakfs in the Union territories of Daman and Diu, Dadra & Nagar Haveli. In the Union territories of Andaman and Nicobar Islands, Lakshadweep, Chandigarh and Pondicherry, the number of wakfs is not many as to warrant constitution of separate and full-time Tribunals. Some part-time tribunals will serve the purpose. Only in respect of Delhi which has a sizeable number of wakfs, a separate full-time Tribunal would be necessary.

3. The setting up of Tribunal in Delhi will involve a non-recurring expenditure of rupees three lakh forty thousand and a recurring annual expenditure of rupees five lakh fifty thousand. The expenditure on payment of salary and allowances of the Chief Executive Officer will be borne by the Wakf Board itself and there will be no additional expenditure on the State Government and Central Government on this account.

4. No expenditure would be involved in setting up of Wakf Boards.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 12 of the Bill empowers the Central Government to make rules for carrying out the purposes of Chapter III of the Bill. The matters in respect of which rules may be made have been specified in sub-clause (2) of this clause and mainly relates to the terms of office, procedure to be followed in the discharge of their functions by and the manner of filling casual vacancies among members of the Central Wakf Council, control over and application of Central wakf fund and the form and manner in which the accounts of the Central wakf Council may be maintained.

Sub-clause (3) of this clause provides that every rule made by the Central Government under this clause shall be laid before each House of Parliament.

2. Clause 110 of the Bill empowers the State Government to make rules for carrying out the provisions of the Bill. Sub-clause (2) of this clause enumerates in detail the matters with respect to which the rules may be made under this clause. These matters relate, inter-alia, to the particulars which the report of the Survey Commissioner and the particulars which a list of wakfs may contain, the manner of election of members of the Board, the terms and conditions of service of the Chief Executive Officer and the conditions and restrictions subject to which he may inspect any public office, records or registers, the manner in which the enquiry may be held by the Chief Executive Officer, the form and the duration in which the budget for wakfs under the direct management of the Board may be prepared, the procedure of audit of accounts of wakfs and wak Boards, the procedure to be followed in respect of sale and recovery of Wakf property, the annual contribution to be made to the Wakf Board by a mutawalli, the payment of money to wakf fund and custody and disbursement of such fund, the procedure to be followed for filing any application to the Tribunal and the form and manner of annual report.

3. Clause 111 of the Bill empowers the State Wakf Board to frame regulations not inconsistent with the Bill and the rules made thereunder for carrying out its functions. Sub-clause (2) of this clause enumerates in detail the matters with respect to which the regulations may be made under this clause. These matters relate mainly to the time and the place of the meetings of the Board and the procedure to be followed for conducting the business at such meetings, the constitution and functions of the committees and the procedure for transation of business at the meetings of such committees, the allowances or fees to be paid to the Chairperson and members of the Board and the committees thereof, the terms and conditions of service of officers and other employees of the Board, the manner in which the budget of the wakf may be prepared and the books of accounts, etc., of the Board may be maintained, the fee payable for inspection of proceedings and record of the Board and the person competent to authenticate the decision or order of the Board

Sub-clause (3) of this clause provides that all regulations made under this clause shall be published in the Official Gazette and shall come into force with effect from the date of such publication.

4. Clause 112 provides that every rule and regulation made under this Act shall be laid on the table of the State Legislature.

5. The matters with respect to which the rules and regulations may be made are matters of procedure or detail and as such the delegation of legislative power is of a normal character.

V. S. RAMA DEVI,
Secretary-General.

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